

The Commonwealth of Massachusetts

SIXTH ANNUAL REPORT

to the

JUSTICES OF THE
SUPREME JUDICIAL COURT;

Executive Secretary.



By the

EXECUTIVE SECRETARY

as of

June 30, 1962

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INTRODUCTION

1. I submit herewith the sixth annual report of the Executive Secretary to the Supreme Judicial Court. All opinions and recommendations are entirely my own. Probably the best of them are derivative, in that I have found the judges of the trial courts and the clerks of court and their assistants particularly ready and helpful in discussing the administrative aspects of the judicial system. This report is for the year ending June 30, 1962, during eleven months of which I was in office. However, since most of the statistics are not available for a considerable period after June and developments occur during that period while the report is being written, some comments on those developments will be found herein.

2. After more than thirty years in the general practice of law, I have not been surprised when busy lawyers have revealed by their questions that they have only a vague idea of the work of the executive secretary. Many have never read the very interesting reports of my predecessor nor the statutory provisions specifying the duties of the office and requiring the writing of this report. Those provisions are contained in sections 3A to 3F of chapter 211 of the General Laws. For a brief reply to inquiries I condense section 3C and say that my duties are to devote all my time to examining the operation of the courts and making reports and recommendations relative thereto to the justices of the supreme judicial court. The breadth of the assignment obviously calls for discrimination with respect to the areas of activity. It readily became apparent that there was an infinite variety of matters to be studied and that from year to year the emphasis would vary with respect to the phases dealt with. Since the objective of court operation is to administer justice swiftly and with certainty as well as impartially and wisely, the mechanisms of the judicial process will always be a major concern, not only of this office but of the bench, the bar and the legislature.

3. An annual duty of the executive secretary is to attend the national conference of court administrators in the first week in August. It has always been at the same time and place as the national conference of supreme court justices. The conference consists of a series of meetings at which reports are made of developments in court administration in each of the states, and there is an exchange of ideas and experience with respect to the various de-

vices used or contemplated to improve the administration of justice. At the 1962 meeting I commenced my report as follows:—

“In the court year commencing July 1, 1961, the Massachusetts judicial system suffered a severe loss when my predecessor in office, John A. Daly, having attained 70 years was required to retire on July 31st. He was the only person to occupy this office since its creation in 1956. A lawyer in active general practice for many years he brought to the new office attainments of a high order. He was that rare combination of scholar and trial lawyer, an intellectual with an abundance of humility, and a rugged advocate who was a formidable opponent for the best of trial men. In addition, his arguments before the full court on appeal, particularly in the field of municipal law, were of such high calibre as to be rated the best by justices who heard them. The court and the commonwealth were very fortunate that he made the necessary financial sacrifice to accept the court's appointment to this office. His six years of service have been appreciated by both bench and bar and in the legislative halls. The fruits of that service will be enjoyed for many years to come.”

COURT CONGESTION

4. The obnoxious perennial in the judicial world is congestion in the trial courts. Not much progress was made in reducing it in the superior court during the year ending June 30, 1962. Although the legislature for the first time in three years provided funds for the use of district court judges in misdemeanor and motor tort sessions in the superior court, the assistance from such judges was disappointing. This was due to the fact that only judges from the part-time courts were certified as available by the administrative committee of the district courts. The judges from the 46 full-time courts were deemed by the committee to be necessary to the proper functioning of those courts. Some part-time judges who have substantial private law practices, or are engaged in business ventures, are loathe to make the financial sacrifice involved in sitting in the superior court for an assignment of a month or more. This reluctance to serve indubitably colors some of the ill health pleas offered when the chief justice of the superior court calls on a part-time district court judge to sit in the superior court. In some cases, these judges who profit in busy private practices from the prestige of their judicial incumbencies, might well meditate on the blessings of retirement if they cannot or will not perform superior court duties prescribed by statute. The number of certified part-time judges competent to do superior court work is not large, and refusals from even a few constitute a public injury.

5. That is not the end of the story on court congestion. My predecessor was happy to report as of June 30, 1959, that the term had become a misnomer. He warned, however, that there should be no slackening of effort in preventing unreasonable delays. The effort within the court has continued, but principally because the court was deprived of help from district court judges for two years, and received inadequate help in the past year, the time lag has increased seriously in most of our cities.¹ Since 1959 it has increased by a full year in the Bristol county cities and in Cambridge, Brockton and Dedham. In Essex county it has increased about five months. In the city of Worcester we have held our own, but in Fitchburg the time lag has increased by nine months, as it has in Hampden county. In most of the less active counties, although generally we have fallen behind the remarkable 1959 performance, the possibility of a trial within twelve months was foreseeable at the end of the judicial year. One factor tending to impede the speedy disposition of ordinary jury cases is the mounting number of pending eminent domain petitions which are, of course, entitled to preference on the trial lists. The counties most seriously affected are Bristol, Essex, Middlesex, Suffolk, Worcester, Norfolk and Plymouth.

6. The use of auditors has continued to assist greatly in controlling the mass of cases in litigation. As many as nine or ten have been sitting constantly in Suffolk, Middlesex and Essex and six in Norfolk and Plymouth counties, with substantial use also in Worcester, Hampden and Berkshire. The total cost for auditors was \$461,880 during the judicial year, and in addition \$71,200 was expended for masters.

7. Despite the constant increase in the number of cases entered there is reason to hope for improvement in the superior court. If assistance from district court judges is not diminished further and the remand statute remains in its present form, an enlarged superior court should be able to cut the time lag considerably in the next year or two. This will not just occur. It can come about only by vigilance and persistent effort. It is not too much to hope that the day will come when superior court judges, instead of being completely engrossed with pushing cases to settlement or trial, will have more time for study. When that time comes perhaps the rules committee can be given periodic relief from trial work to enable its members to engage in protracted studies and consultations. Then, possibly, relatively untapped resources will be brought to the improvement of the judicial system. An active rules committee can develop improvements in practice and procedure for

¹ For other factors than those mentioned in this paragraph, see par. 9.

adoption by the court, and there will be no need to ask legislators, busy on other matters, to make hasty judgments on the technical aspects of the internal mechanisms of the judicial process. Moreover, the greater flexibility inherent in rule-making by the court permits greater opportunity for experimenting with new ideas. Thus, the judicial system, always to some extent prone to ills resulting from inertia, might take on a new vigor.

8. The time lag in the various shire towns, i.e., the time elapsing between entry and trial of civil jury cases, is shown below, as of June 30, 1962.

*Counties in Which Sittings Are Continuous
During the Court Season*

BRISTOL

Taunton	23 months
Fall River	24 "
New Bedford	23 "

ESSEX

Salem	13 "
Lawrence	16 "
Newburyport	12 "

HAMPDEN

Springfield	19 "
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MIDDLESEX

Cambridge	24 "
Lowell	12 "

NORFOLK

Dedham	24 "
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SUFFOLK

Boston—Not motor vehicle or contract	18 "
Motor vehicle tort	12 "
Contract	10 "

WORCESTER

Fitchburg	21 "
Worcester	12 "

County in Which Sittings Are Nearly Continuous

PLYMOUTH

Brockton	22 months
Plymouth	22 "

*Counties in Which Sittings Are Not Continuous
(Approximate Age of Most Recent Cases Reached
in Normal Course When Sittings Are Held)*

BARNSTABLE

Barnstable	14 months
------------------	-----------

BERKSHIRE

Pittsfield	18 "
------------------	------

COUNTY OF DUKES COUNTY

Edgartown	7 "
-----------------	-----

FRANKLIN

Greenfield	12 "
------------------	------

HAMPSHIRE

Northampton	16 "
-------------------	------

NANTUCKET

Nantucket	7 "
-----------------	-----

9. The statistics given above are ominous in themselves. Taken with those shown on the tip-in sheet for the superior court, they carry the warning that there is trouble ahead. The rising tide of litigation cannot be controlled if any of the various devices now in use is abandoned. Moreover, the bench of this great jury court cannot be permitted to degenerate into a perfunctory or harried magistracy. Those members who have predilections for scholarly pursuits should be given the time to engage in them. A judiciary not current in its learning is a weak arm of justice. Other important factors in addition to those mentioned in par. 5 (ante) which threaten an increase in the time between entry and trial of a case not advanced are:—

(1) The ever-increasing criminal case load;

(2) Probably more important, the stiffening of the civil jury trial lists because the cases coming on to those lists after trial before an auditor or in a District Court under the transfer and remand statute are hard-core cases. The significance of this factor, however, is limited to the adverse effect of a slow-moving trial list on the settlement psychology of the litigants. The hard-core cases plus the chaff shaken out at the auditor and lower court level would be a greater burden to the court if we did not have the auditor system and the transfer and remand device. It is the imminence of a trial that disposes of most cases, and even these "preliminary" trials winnow out about ninety per cent of the cases involved.

EXPENSES OF COURT OPERATIONS

10. The total cost of operating the courts of the commonwealth is shown in Appendix I. There is no change in the method of compilation. The cost of pensions and group health and life insurance plans is not included. I agree with my predecessor's well-expressed views on the injustice of the present system, and call attention to the Summary of Costs at the end of the appendix. The commonwealth's treasury bears only 19% of the total cost of administering justice, and one city, Boston, with a dwindling population and an acute tax problem, bears over 26%, and the largest county, Middlesex, bears about 16%. The total cost of slightly over \$18,100,000 looks like a large sum, but when one considers that it is the total cost of administering one of the three constitutional branches of government and is only 2.6% of the total state and county expenditures, excluding debt reduction, one begins to wonder whether enough of the total tax dollar is being applied to that branch of the government which is the constitutional guardian of our liberties.

PHYSICAL FACILITIES

11. The new court house at Stoughton was about completed at the end of the judicial year. The new wing of the court house at Plymouth was also completed, and although it provided much-needed quarters for the district court, the planning was obviously done without adequate consultation with those who were going to use the quarters,—the bench and bar. At last expenditures were authorized for the much-needed remodelling of the Berkshire county court house. It will be interesting to see how effectively the \$300,000 will be expended. Provision has been made for plans for a new court house in Woburn. It is hoped that construction will be authorized promptly.

12. As this report is about to go to press it appears that the Middlesex county commissioners have entered into contracts with respect to plans for both the Woburn court house and a replacement of the Superior Court building at East Cambridge. The architect is the same for both projects, Edward Tedesco Associates of Woburn.

13. Obviously those who make any substantial use of the superior court in its sittings in Middlesex county would prefer to have the building at or near its present site in Cambridge. There are two reasons for this. The first is adequate public transportation. Not all jurors can tie up the family car all day long. The second reason is that the lawyers, who use the building not only

for the trial of cases but day in and day out with regard to business in the clerk's office, are in much greater numbers in the metropolitan area of which Cambridge is a part. The only alternative to a Cambridge location suggested by any one is that the building be constructed near Route 128. The simple answer to this suggestion apart from the lack of adequate public transportation is that the heavy concentration of people is in the metropolitan cities and eastern towns, and that the other principal law building of the county, viz., the building housing the probate court and registry and the south district registry of deeds is in East Cambridge. Moreover, over half of the lawyers in the entire state are in the metropolitan area. Obviously they, numbering close to 5,000, would prefer the more accessible site. At this writing the only poll taken of lawyers with respect to this question was one taken of approximately 900 members of Middlesex County Bar Association, a third of whom replied and were two to one for a Cambridge location. There is no question that a poll of the larger number with their offices proximate to the present Cambridge location would be heavily in favor of a Cambridge site. The thinking on the subject, therefore, should be of greater depth than that exhibited to date, and the emphasis should be placed on adequate parking facilities and planning for the future, in respect not only of those facilities but of the number of court rooms and other court house facilities. Of course, the existence of the Lowell court house is another reason why the new building should be in Cambridge.

14. Another instance in Middlesex county is that of the Somerville court house. In 1958 a \$25,000 appropriation was made for plans. Four years later there has been no decision on site. The appropriation has lapsed. This cannot be ascribed to "the law's delay," unless the bench and bar can be criticised for not being more vocal and insistent.

15. In Essex county the Gloucester court house is a disgrace and its replacement should have a high priority. Imminent loss of the use of rented facilities in Haverhill requires prompt action for replacing them. The court house in Lynn described by my predecessor as inferior and inadequate five years ago is more so now and should be replaced.

16. Installation of an elevator in the superior court building in Lawrence is long overdue.

17. Finally, it is time to build a new court house for the district court at Salem, relocating it in or near Salem with adequate parking facilities.

18. In Hampshire county an addition to the Northampton court house is sorely needed. Mr. Daly placed it on his priority list four years ago.

19. Among others on the 1958 priority list were the district court houses in Chelsea and in Roxbury. While there seems to be hope for the latter in the near future, the former is one of the neglected causes.

Speaking of Suffolk County, the "new court house" wing in Pemberton Square, built twenty-five years ago, had one notorious defect, its fenestration. It was due to the use of steel sash, simply not weather-tight in this climate in such an exposed location. Attempts at repair over the years have been fruitless. An engineering survey determined that the only effective cure is replacement with aluminum window frames. Roof leaks have also made roof repairs and replacement necessary. After an appropriation of \$950,000, all of which is a burden of the City of Boston, bids were obtained, and the lowest bid exceeded the available funds. New bids on slightly altered specifications will be sought in 1963.

20. It would be negligent to conclude this phase of the report without recalling with emphasis what my predecessor said in his first report in 1957 with respect to facilities in Bristol county "the worst in the state." The only major improvement since then has been the remodelling of the Taunton district court building.

CIVIL PRACTICE AND PROCEDURE

21. In his last (5th) report (p. 31) Mr. Daly referred to Resolves of 1961, C. 26, directing the Judicial Council to study the feasibility of adopting rules similar to the federal rules. The Judicial Council reported (37th Report, p. 89), that the subject was too broad, retained the subject for further study, and called on the Bar for specific suggestions. It is my understanding that no specific suggestions have been made. Of course, in Mr. Daly's 5th report he made specific suggestions which will be referred to hereafter. First, however, something should be said about an underlying question suggested by C. 45 of the Resolves of 1962, which referred to the Judicial Council the bill sponsored by Massachusetts Bar Association with reference to the rule-making power of the Supreme Judicial Court. The subject of rule-making is one about which so much has been written in the past thirty-five years that, in what has been described¹ as "the best single article on the subject of allocation" of rule-making powers, it was said in 1958, "Indeed, the flood of rule-making literature is so great that citation

¹ 115 Journal of Legal Education 1, 98, footnote 11 text.

is currently to bibliographies.”¹ From all of this has sprung a welter of statutes and constitutional amendments during the past twenty-five years after the 1934 Act of Congress providing for rule-making power in the Supreme Court, and the promulgation in 1938 of the Federal Rules of Civil Procedure.

22. In Massachusetts as early as 1936, a Special Commission on Investigation of The Judicial System, with two members dissenting, recommended a rule-making bill. The dissent opposed it as a “proposal that the legislature should virtually divest itself of its control, limited as it may be already by constitutional considerations, over pleading and practice in the courts.” It objected to the proposal that court rules supersede legislation and that the Legislature have only a “veto power” over the court rules. It argued further that the proponents had not presented “any important and advisable changes which might be made.” In 1939 another attempt failed. The adverse attitude persisted. In 1956 House 2620, the Judicial Survey Commission report, recommended two bills pertaining to the Supreme Judicial Court. One entitled “An Act Providing for Administration of the Courts and an Administrative Office of the Courts,” was to amend Section 3 of Chapter 211 of the General Laws and to add sections 3A-3F. The proposed amendment to Section 3 added two sentences, the first of which read as follows:—

“In addition to the foregoing, the supreme judicial court shall also have general superintendence and direction of the administration of all courts of inferior jurisdiction, including, without limitation, the prompt hearing and disposition of matters pending therein, and the functions set forth in section 3C of this chapter; and it may issue such writs, summonses and other processes and such orders, directions and rules as may be necessary or desirable for the furtherance of justice, the regular execution of the laws, the improvement of the administration of such courts, and the securing of their proper and efficient administration.” It was adopted with deletion of the unnecessary words “and direction” in the second line.

The other was to amend Section 3 of Chapter 213 of the General Laws. It was entitled “An Act to Extend the Rule-Making Power of the Supreme Judicial Court.” It would have added five paragraphs to said Section 3. In essence it was a revision of the 1936 Bill, but instead of leaving the Legislature only a power to veto rules it provided that the act would not “abridge the right of” the Legislature “to enact, modify or repeal any statute, or modify or repeal any rule of the supreme judicial court adopted pursuant

¹ 107 U. of Pa. L. Rev. 1, @ 5, n. 27.

A recent brief review of the general subject is found in Barron & Holtzoff Fed. Pr. & Procedure (Rules Ed.) (Civil) Wright Revision (1960) Vol. 1, Secs. 2 to 10.

thereto." There were other changes from the 1936 Bill not pertinent to this discussion. It is clear from reading the Judicial Survey Commission report that if it was thinking of rules of practice and procedure when it recommended that in chapter 211 the Supreme Court be "granted" the power to "issue" . . . "such" . . . "rules as may be necessary or desirable for the furtherance of justice . . ." the part of the report dealing with chapter 211 was silent on that subject. The utmost, however, that amendment added, if anything, was the power, or the recognition of an existing power to make rules for all the courts rather than for itself alone. There is nothing in the words added to suggest that such rules would supersede existing statutes. That this "grant" or "recognition" of rule-making power appears with provisions pertaining to "administration" may have significance in that prior to 1956 a distinction between "administration" and "practice and procedure" was not unknown. Indeed, the much discussed New Jersey Constitution of 1947, Art. VI, 22, par. 3 reads, "The Supreme Court shall make rules governing the administration of all courts in the State and, subject to law, the practice and procedure in all such courts." The dichotomy was not new in 1947. The 1938 report of the Committee on Judicial Administration of the Section of Judicial Administration of the American Bar Association, a member of which was our present distinguished Secretary of the Judicial Council, made the distinction.¹

23. Whatever be the proper construction of existing statutes, it is clear that when the Legislature referred to the Judicial Council the Judicial Survey Commission's bill pertaining to rule-making, the Judicial Council, with one dissent, was not convinced that the time had come for the Legislature "to relieve itself by extending the rule-making power of the court in the manner proposed." (32nd Report, p. 17.) Underlying the opposition is, I believe, a fear of "wholesale" adoption of the Federal Rules which would involve providing for one form of action. The reason for abhorrence of that result is set forth in the 1956 (32nd) report of the Judicial Council, pp. 10-14. Of course the merger of law and equity under Federal Rule 2 is merely procedural, not substantive.² The matter

¹ 63 A. B. A. Rep. 530, 532.

The distinction would seem to be that procedure pertains to intra-case activity and administration to activity within the judicial system on a broad scale, the former to techniques of resolving disputes, the latter to techniques of calendar control, assignment of man-power, keeping of records and statistics, provisions for physical and other facilities and possibly to fiscal operations and selection of personnel. Of course techniques of calendar control, prevention of undue delay, are intimately connected with the efficiency of procedural devices. The narrowing of issues by such techniques as demands to admit facts and pretrial conferences is intimately connected with the problem of reducing the time lag between entry and trial of the case next on the list. Likewise the discovery tools, written interrogatories and pretrial oral depositions tend to resolve disputes before trial, or if that is not achieved, then to reduce the length of the trial.

² Barron and Holtzoff Fed. Pr. & Procedure (Rules Ed.), Wright Revision, Sections 140, 141, 871, 872.

See *General Electric Company v. Callahan et al.*, 294 Fed. 2nd 60 U. S. Ct. of Appeals 1st Cir. (1961).

dealt with in the Judicial Council report last mentioned was not merely a proposal to adopt the substance of Federal Rule 2, it involved a further proposal "that the equitable defence of 'adequate remedy at law' be abolished."

24. Possibly the language of the Judicial Council in speaking of the Legislature relieving itself "by extending the rule-making power of the court in the manner proposed" is to be deplored. It certainly should be if the Supreme Judicial Court has inherent constitutional power, superior to that of the Legislature, to make rules of practice and procedure for itself and for all other courts of the Commonwealth.

25. There are basic difficulties underlying modern discussions pertaining to the rule-making power in matters of practice and procedure. Both the legislative and judicial branches have acted in the field. Questions of ultimate overriding power under the doctrine of constitutional separation have not been decided by the only body having the power of decision, our Supreme Judicial Court. Although in the bar control cases it had to decide where the ultimate and overriding power lay with respect to rules governing the mechanics who operate the law's machinery, it has not yet had to decide where it lies with respect to rules governing operation of the machinery itself. In saying that rules of practice and procedure are rules pertaining to the operation of the machinery of the law, we are immediately involved in the question of what is machinery and what is not.

We are saying again merely that there is a distinction between substance and procedure, but we should go on to say that the distinction is obscured because we are travelling in foggy terrain. Much of the writing on this subject outside of Massachusetts is colored by what might be called code-state thinking. By this I mean that the tradition of legislative rule-making is of greater significance in a code state, and the desire for prescription of detailed rules for the conduct of cases is ingrained.

The position of our Supreme Judicial Court in the constitutional framework is unique. It is not only the sole constitutional court, but it is the provincial court carried over by the constitution. As early as Chapter 9 of Acts of 1782 the Legislature recognized the court's power to make "all other Rules respecting Modes of Trial, and the Conduct of Business, as the Discretion of the same Court shall dictate. Provided always, That such Rules and Regulations be not repugnant to the Laws of the Commonwealth." Our court has never had to decide the exact meaning of the concluding proviso. If ultimate power as to practice and procedure is in the Court rather than in the Legislature, the proviso can refer then

only to "Laws of the Commonwealth" that are not procedural. A somewhat similar provision in the modern New Jersey constitution was so construed by the leading judicial exponent of court reform in modern times, the late Chief Justice Vanderbilt.¹ Proceeding on purely historical grounds our court might have less difficulty in finding inherent superior rule-making power in itself.² Having done that, it might, as in the bar control cases,³ sustain non-conflicting procedural legislation as "in aid of the judicial department," and invalidate conflicting legislation in that field as superseded.⁴

26. I do not venture to suggest that I am producing the definitive answer to the basic constitutional question. Much less do I suggest that anything said herein mirrors any opinion of the present members of the Supreme Judicial Court. I venture to suggest, however, that the court is so engrossed in the prompt performance of its primary duty, the deciding of cases on appeal, that it has no time presently for other than the most urgent and necessary collateral matters. Regulation of practice and procedure is one of these and in the absence of any widespread sustained clamor at the bar for change there is little likelihood of any immediate major reappraisal of our modes of practice and procedure.

27. In the meantime, each of the courts has rule-making power, recognized by statute at least to the extent that it is not exercised so as to conflict with existing legislation. It is interesting to contemplate what might be done now by the Superior Court in the exercise of its rule-making power.

28. The great nation-wide enthusiasm for revamping practice and procedure in the courts began with the 1938 promulgation of the Federal Rules and has been imitative of them to an ever increasing extent. The extraordinary reform in Maine, was guided by Prof. Richard H. Field, a native of Maine, who was a working trial lawyer in Boston in the 30's and for the past 16 years has been teaching Procedure at Harvard Law School.

¹ *Winberry v. Salisbury*, 5 N. J. 240, 74 A 2nd 406 (1950). See Kaplan and Greene, *The Legislature's Relation to Judicial Rule-Making: An Appraisal of Winberry v. Salisbury*, 65 H. L. Rev. 234 (1951) and Roscoe Pound "Procedure Under Rules of Court in New Jersey," 66 H. L. Rev. 28 (1952). See also *Legislative Control Over Judicial Rule-Making* 107 U. of Pa. L. Rev. 1, (1958).

² See reprint of Roscoe Pound's 1926 A. B. A. address in 21 M. L. Q. No. 5 at 11th page following p. 64 and the same author in 13 A. B. A. J. 12, 14 (1927). See also "The Regulation of Practice and Procedure in Massachusetts," 23 M. L. Q. 1 (Jan.-April, 1938), pp. 9-19, and *Boston Bar Bulletin*, Feb. 1938, pp. 29-35 and 57-59.

³ *Keenan*, Pet'r. 310 Mass. 166
Keenan, Pet'r. 313 Mass. 186, 204
Keenan, Pet'r. 314 Mass. 544, 546
Berkwitz, Pet'r., 323 Mass. 41
Collins v. Godfrey, 324 Mass. 574

⁴ *Berkwitz*, Pet'r., 323 Mass. 41

"Upon the effective date of the adoption of our General Rules in Relation to Attorneys, by rules 1 and 7, the jurisdiction previously conferred upon the Superior Court by G. L., (Ter. Ed.) C. 221, Sec. 37 to hear the present case was superseded and the Superior Court was thereafter without jurisdiction to hear it." (Ibid @ p. 47.)

There is great appeal to many in the prospect of a similar re-vamping in Massachusetts. There is much to be said for the major surgery approach and for deprecating a piece-meal change as band-aid surgery.¹ It is not my purpose to go any further at this time than to advocate experimenting now in the Superior Court in exercise of the rule-making power.

29. The federal rules of civil procedure most frequently used as models in the states are those known as the discovery rules. One of them, the demand to admit facts and the genuineness of documents (Rule 36) is not essentially a discovery device,² but one intended to narrow the issues before trial. It is generally grouped with oral depositions and written interrogatories under the heading of discovery, however.

In examining what Massachusetts practice now contains that is found in some form or other in the federal rules, Rule 36 is an interesting one to consider.

30. The 1938 notes to Rule 36 cite similar rules then existing, among them "English Rules Under the Judicature Act, The Annual Practice, 1937, Order 32, and Massachusetts General Laws (Ter. Ed. 1932) Chapter 231, Section 69."³ Not only was the Massachusetts statute one of the progenitors of Federal Rule 36, but the statute itself was preceded by a rule of the Superior Court. It originated in the English Rules of Supreme Court (1883 2 and 4 under Order 32. As early as 1915 our statute was preceded by Superior Court Rule 38 which read as follows:—

"Uncontested Facts and Signatures.

"A party, by notice in writing served not less than ten days before a case is put on the daily list for trial, may call upon the other party to admit, for the purposes of that trial only, any fact which he deems material and not to be in dispute, or the execution of any written paper which he intends to use at such trial.

"The court may delay the trial until such notice is answered.

"If no answer is returned within ten days after filing a copy of said demand in the clerk's office, or within such further time as may, on motion be granted, the truth of the fact or execution of such paper shall for the purposes of that case, and for such purposes only, be held to be admitted." It is significant that what is now expressed by statute, G. L., C. 231, S. 69, was in its original form a rule of the Superior Court. It is also interesting that the absence of any sanction against the bad faith litigant who unrea-

¹ See Clark "The Influence of Federal Procedural Reform" 13 Law & Contemporary Problems 144 @ 154 footnote 38 (1948).

² Developments In The Law—Discovery 74 H. L. Rev. 940, @ 968.

³ Barron and Holtzoff, Federal Pr. & Procedure (Rules Ed.), Wright Revision, 1960, Vol. 3 A, p. 462.

sonably refuses to admit a fact was criticised in 1 Mass. Law Quarterly 201 (May, 1916) by George K. Gardner of the Boston Bar, thus:—

“Unless the court consistently imposes costs where an admission of facts is unreasonably refused, it seems probable that refusals to admit will become as much a matter of course as answers of general denial. The English model from which it is taken expressly authorizes the trial judge to impose the cost of proving any fact on the party who, after notice, has unreasonably refused to admit it, no matter who may prevail upon the whole evidence presented at the trial (Rules of the Supreme Court; Order 32, §§ 2, 4; to be found in 1916 Annual Practice, pp. 546, 548).”

Mr. Gardner also pointed out that another rule of the court imposed as sanction the “cost of witnesses occasioned by setting forth other matters” in his declaration or answer than the party intended to rely on.¹

31. Rule 38 of the 1915 rules became Rule 37 of the 1923 rules. In the meantime, by Acts of 1917, C. 194 the Legislature had incorporated the substance of rule 38 of the 1915 rules into a statute the benefit of which was limited to plaintiffs in actions to recover for goods sold and delivered or for work, labor and services performed.

This became Sec. 69 of C. 231 of the General Laws of 1921. In 1925 in its 1st Report² the Judicial Council pointed out the weakness of the statute and of the court rule, then Rule 37 of the 1923 Rules, and recommended a redraft of the statute including a sanction. The redraft extended the availability of the device to all actions at law or suits in equity. The sanction it proposed was essentially the same as that which is now in federal rule 37C, i.e., the reasonable expense “including counsel fees” of proving the fact unreasonably denied. As enacted by Acts of 1926, C. 381, §§ 1, 2, the parenthetical “including counsel fees” was omitted. Whether this omission was because the words were deemed surplusage is not clear. It is clear, however, that the sanction is of small practical value unless the word expense as used in the last sentence of Sec. 69 of C. 231,³ can be construed to include a reasonable counsel fee.⁴

¹ Rule 6 of the Superior Court 1915 Rules and second Par. of Rule 60 of the 1923 Rules. Omitted without explanation in 1932 Rules, this provision had been in the Common Law Rules since 1886.

² 11 M. L. Q. 1, p. 43.

³ After the 1926 amendment to Sec. 69 the Superior Court on April 9, 1927, repealed what was then its Common Law Rule 37.

⁴ It is to be noted that this is not the same question as that involved in *Sears v. Nahant*, 215 Mass. 234, 239, and that we are not dealing here with taxable costs but with “expense” to be “added to the taxable costs of the party in whose favor such amount is awarded, or deducted from the amount of any judgment or decree against him.” What is provided for here is exemplary damages for unreasonable conduct, for contumacious evasion. As a practical matter usually the only expense of any substance is the cost of the attorney’s time in proving the fact which the recalcitrant party has unreasonably refused to admit.

The further amendment to Sec. 69 by Acts of 1946, C. 450 added the requirement that a denial of an alleged fact or execution, or an explanation of inability to admit or deny, be under oath. This should have made evasive denials unthinkable, yet, complete disregard of the solemnity of the oath has occurred now and then, when answers filed to demands to admit facts were as remote from reality as is the usual general denial filed as an answer to a declaration. Such conduct should not be tolerated in any court of justice.

32. Two questions are posed in respect of the monetary sanction:—

(a) Does the statutory "expense" include a counsel fee?

(b) If "expense" as used in Sec. 69 does not include a counsel fee, does the court because of its power to make rules, have power to increase the statutory sanction, or, if not, to add to it as a sanction for the more extreme cases of unreasonableness?¹

33. As to failure to observe the fact that the answers under Sec. 69 are sworn answers, a remedy, other than to cite for perjury, might be found if it became generally known at the bar that the judiciary intended to deal firmly with recalcitrants. The suggestion is that periodically, by notice to the bar, rather than by rule, the court let its policy be known with respect to details of enforcement of statutes and court rules in matters of practice and procedure. Such policy pronouncements, particularly when they carry the threat of sanctions, would have a twofold effect. First, they would warn the bar that high standards were to be kept high. Second, they would tend to more uniform enforcement by the numerous members of the particular bench.

34. It took many years before any legislative sanction was devised for this, one of the minor rules ordinarily classified as in the discovery field, and when the Legislature finally adopted a sanction, it had only baby teeth. Even a stronger sanction, such as that in the federal rules and in the rules or statutes of the many states which have imitated the federal rules, is of no significance unless the judiciary adopts a policy of firm enforcement, ever mindful of the fact that a court rule is a useless admonition unless it has a bite that occludes.² Even the federal rule, 37C, specifically including

¹ This presents the question of whether the court has rule-making power apart from statutory "grant," and if so, whether it includes the power to impose reasonable sanctions to ensure obedience. Passing those questions and one as to whether it can increase a statutory sanction, the next question is whether it may provide by rule for an *additional* sanction for the more extreme instances of unreasonable refusal. If all monetary sanctions are "costs," and if they must be controlled by legislative definition or legislative delegation of authority to define, then the question is whether the legislative "grant" of rule-making power to the Superior Court, for example, includes the power to provide by rule for imposition of an attorney's fee for grossly unreasonable refusal to admit after a demand under Sec. 69 of Chapter 231. Cf. *Fuller v. Trustees of Deerfield Academy*, 252 Mass. 258 @ 262 where reference was made to the possibility of a rule (under Chapter 213, Sec. 3) including imposition of attorneys' fees as one of the terms on allowance of amendments.

² For a recent discussion of federal rule 36 see 71 Yale Law Journal 371 (January 1962).

attorneys' fees as an element of expense has not been as useful as it might have been if the courts had been ready to impose the sanction rather than to avoid using it except in extreme cases.

35. It may seem that I have devoted inordinate space to a minor device of relatively little value.¹ It will not be wasted, however, if it serves to correct a current tendency to assume that revision of state practice and procedure in the light of experience under the federal rules is a simple matter which can be taken care of by a few concise presentations to the legislative Committee on the Judiciary, or by a few half-day sessions of a court's rules committee. In a foreword to the Maine Practice book² Chief Justice Williamson of the Supreme Judicial Court of Maine reviewed the history of the two-year project in that state. It is an interesting revelation of sustained intelligent co-operation between legislators, lawyers, law schools and judges. That history, and even a preliminary perusal of the reporter's notes, are probably the best argument that can be found for the "wholesale revision" method of improving the mechanisms of the administration of justice. One is impressed with the fact that the interrelation of the matters dealt with in the rules is so great that the method adopted in Maine may well be the best possible approach. In brief, it involved two years of careful study by representatives of the bench and bar, and the revision of existing legislation covering the same subject matter, after the rules provisions had been decided on. At the very beginning of that study the court approved the decision that the rules should be based on the Federal Rules "with such modifications as seem desirable for Maine." This saved much time.³ Such a threshold decision, however, is one that would be resisted by those who view any proposal for change as "containing all the vices of novelty and none of the virtues of permanent improvement." Such objectors see danger rather than value in making practice as nearly uniform as is practical in the state and federal systems. One cannot but feel that they are protesting in vain. A generation of lawyers has come to the bar since the federal rules went into effect, and law school courses in practice and procedure now focus on the federal rules as the norm. Of course, no one advocates strict uniformity. A close assimilation to the federal rules is the normal objective.

36. The principal mode of discovery in Massachusetts is by written interrogatories under the provisions of sections 61 to 67, both inclusive, of G. L., C. 231. This practice is over 100 years old. It was instituted in the Practice Act of 1851. Except for the 1958 amendment requiring that answers to interrogatories be dated,

¹ See Field and McKusick Maine Civil Practice § 26, 4.

² Ibid. pp. 1-6.

³ Ibid. p. 2.

there have been no amendments to these sections in over 30 years. Advocates of substitution of federal rule 33 would point out that the principal differences are that under the federal rule the scope of the inquiry is limited only to relevancy to the subject matter of the proceeding rather than to facts and documents admissible in evidence,¹ and that there is no limitation in the federal rule to the number of interrogatories. In the Maine adaptation of federal rule 33, the Massachusetts limitation to thirty interrogatories, unless the court otherwise orders, was adopted. The Massachusetts practice was reviewed in 1948,² in 33 M. L. Q., pp. 9-27.

37. Sec. 68 of C. 231 provides for inspection of documents, but is limited to documents referred to in the pleading or particulars "of any other party and relied on by such other party." The proponents of adoption of the broader provisions of federal rule 34 will doubtless find many supporters at the Massachusetts bar. The case of *Owens-Illinois Glass Co. v. Bresnahan*, 322 Mass. 629 and the discussion in the opinion in *MacPherson v. Boston Edison Co.*, 336 Mass. 94, both bills in equity for discovery in aid of pending law actions, would suggest the advisability of adopting the broad provisions of the federal rule, whereby the procedure is by motion in the particular proceeding.

38. Another form of discovery in Massachusetts is that limited discovery permissible since 1954 under the provisions of G. L., C. 175, Sec. 113J, which provides that an insurer under a compulsory motor vehicle liability policy or bond requesting and making medical examinations of an injured person must on demand furnish the party or his attorney with copies of reports of all medical examinations made, provided the injured party on request reciprocates with copies of similar reports made by his own physician. The broader provisions of federal rule 35 might well be adopted, or at least the provisions of the present statute extended to cases other than motor vehicle torts, and a sanction should be provided for non-compliance.

39. Of course the most commonly mentioned mode of discovery under the federal rules which is advocated for adoption in Massachusetts practice is pretrial oral discovery. Not all of the proponents are aware of the fact that for thirty years off and on the Judicial Council of Massachusetts has recommended some form of pretrial oral discovery, and that the Legislature has always failed to adopt the suggestions. I think there is no doubt that the Su-

¹ Under G. L., C. 231, Sec. 62 a party must give in his answers hearsay which is the result of his inquiries of his agents, servants and attorneys. But under Sec. 63 he need not disclose names of witnesses, unless ordered when "justice seems to require it."

² "Interrogatories as Pretrial Discovery in Massachusetts," by George K. Black.

perior Court has adequate rule-making power to experiment in this field. One of the better pleas for action of this sort was made in an article by John M. Mullen in the *Boston Bar Journal* for February, 1958. This is a field in which the flexibility of judicial rule-making is by far preferable to the slow, cumbersome, rigid method of legislative regulation. One of the most common objections to adoption of the federal practice in pretrial oral discovery is that the federal system has a built-in control applicable to diversity cases—the \$10,000 limitation. If the Superior Court were to experiment in this field, it could confine the experiment in the first instance at least in law actions to a category such as that which now results from the \$2,000 limitation in transfer and remand cases under the provisions of Sec. 102 C of G. L., C. 231. On the equity side probably no such categorical limitation would be necessary, except possibly with reference to those cases which are essentially law actions with an equitable attachment, bills to reach and apply under the provisions of C. 214, Sec. 3, subdivision 7.

40. If the Superior Court should decide to experiment by rule with pretrial oral depositions, it would not have to restrict their use to the parties as long as the court retained adequate control so as to protect against harassment.¹ It could consider such subjects as the extent to which an engagement in a deposition hearing would be recognized in court, if at all. For instance, it might provide that in counties in which the court does not have continuous sittings any pretrial oral deposition engagements would not be recognized while the court was sitting in that county, and it might provide that no such engagement would be recognized in other counties where the court is sitting, or in the counties with continuous sittings, except upon special order from the judge in control of the trial list. Most of the objections to the pretrial oral depositions in the state courts have been based on fears of what might happen. Those fears could be dissipated if the court held tight control of the practice. If any statutory provisions for pretrial oral depositions are adopted before such provision is made by rule of court, I hope that the statute will specifically state that nothing in it shall be deemed to attempt to restrict judicial rule-making power in that field. This would not be merely a gracious gesture by the Legislature. It would reveal legislative cognizance of the value of the more flexible tool for introducing a procedural change. Moreover, it might overcome a tendency to carry judicial restraint to an extreme out of deference to the legislative branch. Such an excess in deference can become a dereliction of duty.

¹ This would take care of the situations referred to in John Daly's Fifth Report, Par. 36.

TRANSFERRED AND REMANDED CASES

41. In the court year, a net of 11,025¹ cases were transferred or remanded from the Superior Court under G. L., C. 231, Sec. 102C for trial in the District Court. In the same period only about 9% of that number, viz., 997 cases, were transferred to the Superior Court after a lower court trial. Of these, 386 were in Suffolk County, and of that number 90 cases were reached for trial within the judicial year. An analysis of those 90 cases was most revealing. In over half of them viz., 53, there was no change in result in the Superior Court, and in another 20%, viz., 19, the cases were settled in the Superior Court after plaintiff findings in the lower court. In another 9% (app.), viz., 8, findings for the defendant were reversed in the Superior Court. In 3 cases plaintiff's findings in the lower court were turned into defendant's verdicts by Superior Court juries, and in 4 cases plaintiff's findings in the lower court were increased slightly in the Superior Court. Perhaps more interesting was the fact that only a few of these 90 cases involved over \$1,000, and those would never have been remanded if plaintiff's counsel had filed the required statement of detailed facts supporting the damage claim.

It is earnestly hoped that there will be no change in the statute until we have had a longer experience with it. One aspect of the operation of this statute must not be overlooked, however. The District Courts must continue to recognize the responsibility that is theirs in preventing a congestion problem in their system as a result of the influx of this new business. The Administrative Committee of the District Courts and the Chief Justice of the Municipal Court of the City of Boston have been vigilant in this respect. They have taken the initiative and assigned the transferred and remanded cases for trial. If they had not and everything had been left to counsel, the normal result would have been that in the closing months of the trial year the lists would have been clogged, and the carry-over from year to year would have snowballed. One other aspect of the problem is that of recognition of engagements. It is now clear that the Superior Court will recognize engagements of counsel on trial in a District Court in a case transferred or remanded from the Superior Court. Of course one District Court must recognize engagements in other District Courts as well as in the Superior Court. None of the courts is free, however, from the ever-recurring problem of the trial lawyer with so many cases that he creates a situation in which the Judge is required to decide whether the right of that lawyer's clients to the services of that lawyer and no one else must override the right of the opposing litigant to a prompt trial. Fortunately, such situations are not as

¹ 362 other cases were transferred or remanded and later brought back before trial.

common as one would gather from the decibels of the complaints of the disgruntled.

42. An anomaly that needs correction arises from the fact that actions commenced in a District Court may be removed to the Superior Court by a defendant even when it is apparent from the ad damnum of the writ that the recovery will not exceed \$2,000. After removal the case is remanded to the District Court for trial. The delay involved and the unnecessary work in the clerk's offices of both courts should be eliminated. Rather than instituting probable recovery appraisals by District Court Judges I recommend a simple amendment to the removal statute, Sec. 104 of G. L., C. 231, which would catch the great bulk of the cases, those in which the ad damnum does not exceed \$2,000, and prevent their removal until after a lower court trial. After that the case could be removed to the Superior Court and tried subject to the provisions of Sec. 102C. A draft of the bill to amend Sec. 104 is set forth in Appendix II.

CRIMINAL PROCEDURE

43. By Acts of 1962, C. 366, amending G. L., C. 221, Sec. 34D, the power to appoint and to remove members of the unpaid Massachusetts Defenders Committee was transferred from the Judicial Council to the Justices of the Supreme Judicial Court. In June on a petition for a writ of error, Justice Spalding, sitting in the County Court reversed the judgment of conviction of an indigent seventeen-year-old girl, who had pleaded guilty to a misdemeanor charge in a District Court. The Justice felt constrained to rule that the conviction was lacking in procedural due process because the girl had not been represented by counsel. The charge involved a substantial period of imprisonment, and she was of "confused personality with a poor emotional and psychiatric background," and "the dominant motive that influenced her plea was the idea conveyed to her that this was the only way she could get proper medical care in her forthcoming confinement." The case serves to emphasize the principle that the constitutional requirement of representation by counsel can be applicable in a variety of instances where the seriousness of the charge or other circumstances affecting the accused are compelling.

44. Pursuant to the recommendations of John Daly in his fifth report (pars. 46, 47, 52-54), the Legislature enacted two amendments to C. 278 of the General Laws. The first, by C. 310, Acts of 1962, amended Sec. 29 and added Sec. 29C so that the power of the Superior Court to revoke and revise a sentence after a trial is

subject to the same time limit as after a plea of guilty or nolo, viz., sixty days after imposition of sentence.

The second, by C. 453, Acts of 1962, amending Sec. 33E, extended the power of the Supreme Judicial Court in reviewing convictions of murder in the first or second degree. It gave the court, as an addition to its power to order a new trial, the power to direct the entry of a verdict of a lesser degree of guilt. It did not adopt the recommendation that the power be extended also to permit ordering a verdict of not guilty by reason of insanity.

COMMENTS ON THE VARIOUS COURTS

SUPREME JUDICIAL COURT

45. For the court year ending August 31, 1962, the full bench decided 330 cases of which 69 were rescript opinions and 261 formal opinions. One other case argued during the year was decided by a divided court after the end of the court year, viz., October 3, 1962. This record of prompt decision of cases on appeal has been maintained since 1956. One observation should be made about the rescript opinion. Although the name of the Justice who writes the opinion is not given, it is not a mere per curiam notation. Often it is a classic example of precision and clarity in opinion writing, so that one misses the name of the writer.

46. The Council of State Governments prepared for the Conference of Chief Justices a study entitled "Workload of State Courts of Last Resort" for the judicial year 1960-1961. Starting with the statistics developed in that study, I have attempted to compare the work of our Supreme Judicial Court with that of other jurisdictions. This involved an examination of opinions in the reports of several jurisdictions which the statistical compilation indicated to be comparable. Weight was given to the fact that in some jurisdictions a large number of the cases had already been reviewed by an intermediate appellate court. My conclusion is that, measured by the number of cases in which oral arguments were heard and full written opinions handed down promptly, the Supreme Judicial Court of Massachusetts has a greater work product than that of any other seven-man court of last resort in the nation. In addition it is the general opinion in legal circles that the quality of its work is as high as that of any other court in the country and excels most of them.

47. In addition to the substantial volume of appellate work our court has had an extraordinary burden of exclusive original jurisdiction. Over twenty years ago the late Justice Henry T. Lummus wrote:—¹

¹ "Single Justice Sittings of the Supreme Judicial Court," 12 Boston Bar Bulletin 104, May, 1941.

"A court of last resort needs ample time for wide reading, research, deliberation and consultation. Our court has never had that. Ever since I can remember it, the court has been worked to the limit of its capacity. Ever since I became a member of it, the pressure of undecided cases and expected new cases has borne heavily upon us. Our present policy, forced upon us by necessity, of reducing the work of the single justice session to the least amount permitted by law, seems clearly in the public interest. It is the only practical policy for us until the Legislature sees fit to make the Supreme Judicial Court, like the highest courts of most other states, purely a court of appeal."

For a span of five years, 1950-1955 (26th to 31st Reports), the Judicial Council recommended ameliorating the situation by increasing the concurrent jurisdiction of the Superior Court, but its recommendations were ignored. I am happy to report, however, that the Legislature of 1962, by enacting C. 722, Acts of 1962, gave the Supreme Judicial Court discretionary power to transfer to such lower court as it should designate any case within its original jurisdiction, excepting those pertaining to judgments or decrees of the Supreme Judicial Court or pertaining to its orders to another court or judicial officer, or to matters incidental to its appellate function. This does not mean that the burdens of the single justice session were evaporated, but, it does enable the court to ease those burdens when the necessity is great. The new legislation also increased the power¹ of the Supreme Judicial Court to transfer to it from a lower court any cause or matter in whole or in part. The enactment of this legislation represents the kind of thoughtful cooperation between the legislative and judicial branches which is to be commended and encouraged.

SUPERIOR COURT

48. During the past year the court suffered the loss of two esteemed members. Associate Justice Jesse W. Morton died on May 21, 1962, and Associate Justice John V. Sullivan on June 3, 1962. The vacancies thus created were filled in October, 1962, by the appointment as Associate Justices of Francis L. Lappin, Esquire, of Dracut and Joseph Ford, Esquire, of Quincy.

49. Most of what has been said on congestion, pars. 4-9, and on Civil Procedure, particularly pars. 27-42, relates to the Superior Court. Although the grossly inadequate compensation, in no case over \$34 additional per day, provided for the services of District Court judges in the Superior Court probably has no substantial connection with most of the refusals to serve referred to in paragraph 4, some change should be made in the statute. The existing

¹ The language used is not intended to negate the possibility that the legislation merely recognized an existing inherent power.

provision, \$50 per day less the per diem of the part-time judgeship, has not been changed since 1952. Since the 1961 increase in the salaries of the judges of the full-time District Courts to \$16,000, we have had the anomaly of District Court judges serving in the Superior Court at less per day than a full-time District Court judge sitting in the lower court. I propose an increase in the gross per diem to \$75 per day. From this the per diem of the judge's lower court salary is to be deducted. A draft of the proposed amendment is Appendix III.

50. In addition to the Act on the revision of sentences referred to in par. 44, the 1962 Legislature enacted two other measures affecting the Superior Court which had been recommended by Mr. Daly. C. 312 increased the per diem reimbursement by one county to another for the use of the latter's salaried court stenographer. The other, C. 567, added Sec. 32A to G. L., C. 214. It provides for transfer to a Probate Court by any Superior Court Justice of any equity case (except those arising from a labor dispute). Such transfers require approval by the Chief Justice of the Superior Court, the Administrative Committee of the Probate Courts, and a majority of the Probate Judges in the county to which the transfer is to be made. The approval requirements should not prove to be as cumbersome as they sound. Mr. Daly expected that this transfer device would be used only in emergencies, and that major use would be in smaller counties where sittings without jury are short.

51. Superior Court statistics for the year ending June 30, 1962, are in Appendix VI. Total annual entries on the law side have increased by about 4,000 since 1959, 32,245 to 36,113, and equity entries are up slightly, 4,638 to 4,717. The statistics of criminal business show an over-all increase of more than 12 per cent above 1959, more acute in appeals from lower courts in respect of less serious offenses. The limited resumption of use of District Court judges in motor vehicle tort and misdemeanor sessions provided 252 motor tort trials as against 586 in 1959 and 995 misdemeanor trials as against 1,311 in 1959. These judges sat 542 days in civil sessions and 536 days in criminal sessions as against 1,087 civil and 603 criminal in 1959. Superior Court Judges had to sit 354 more days in criminal sessions in 1962 than they did in 1959.

THE LAND COURT

52. Although Land Court decisions "frequently include recitals of facts," *Sheehan Construction Co. v. Dudley*, 299 Mass. 48, and, under an anomalous exception, applicable to appeals on

the law side of the Land Court, facts stated in the judge's decision are a part of the record, *Cerel v. Framingham*, 342 Mass. 17, 18, footnote, there is no statutory provision under which a party in equity may obtain as of right a report of material facts. Comment on this statutory gap was made in *Kershaw v. Zecchini*, 342 Mass. 318. There seems to be no reason why that right which is available in equity in the Supreme Judicial, Superior and Probate Courts under the provisions of G. L., C. 214, Sec. 23, and C. 215, Sec. 11, shouldn't be available in equity cases in the Land Court. Therefore, I recommend the addition of a new Sec. 15A, to G. L., C. 185, to incorporate the equity practice provisions contained in Secs. 23, 24, 25 and 25A of G. L., C. 214. The companion provision in Sec. 125A of G. L., C. 231, also should be amended. The draft bill will be found in Appendix IV.

PROBATE COURTS

53. There were no major changes in the Probate Courts during the year ending June 30, 1962. By September, 1962, Rule 13 of the General Rules of the Supreme Judicial Court shall have been in effect for a full year. This rule requires the maintenance of a separate docket pertaining to appointments of appraisers in estates with gross assets in excess of \$100,000, guardians ad litem, investigators; and fiduciaries other than the person whose appointment was prayed for. It also must contain a record of the payments received by such appointees, who have the duty to file certificates of payments within thirty days of receiving them. A preliminary examination of these dockets in the Probate Courts covering the first five months under the rule revealed nothing of a startling nature. Another study will be made after the rule has been in effect for a full year.

54. During the year the Legislature had before it two bills with respect to Probate Court appraisers. Mr. Daly's bill would have abolished the office entirely. One supported by the Massachusetts Bar Association would have eliminated appointments except when a request for an appraiser was made by a party in interest. There seemed to be no logical objection to the last mentioned bill. There was objection, however, from the only elected officials in the Probate Court system, the Registers of Probate. They appeared in numbers in opposition, and the bills were promptly killed on the recommendation of the Committee on Legal Affairs. The same treatment by the same committee killed one bill to create a chief justiceship in the Probate Courts and another to give meaningful administrative authority to the Administrative Committee of the Probate Courts.

55. Ultimately the Probate appraiser will be eliminated, except when requested by a party in interest. I hazard this prophecy because I am optimistic enough to believe that what has degenerated into nothing more than picking the pockets of the dead¹ will not long be tolerated. At least the lawyers, who asked for action cannot be blamed if nothing is done. I am also hopeful that something will be done soon to strengthen the authority of the Administrative Committee of the Probate Courts, or to provide for a Chief Justice with administrative authority. There seems to be growing sentiment among the Probate Judges for some provision for centralized administrative authority.

DISTRICT COURTS

56. The District Courts had a busy year, and next year will probably be busier, for the increase from \$1,000 to \$2,000 in the critical amount under the transfer and remand provisions of Sec. 102C of G. L., C. 231 did not become effective until the end of April. Although the full impact of the change has not yet been felt, the number of cases transferred to the District Courts increased by more than fifty per cent over the previous year.

57. The extent to which judges in the so-called full-time courts travel out of their districts to sit in other districts is not generally known. Some of them, particularly in the western part of the state, travel substantial distances for this purpose. In the near future there will probably be need of more full-time courts to provide a sufficient number of judges to handle the increased civil case load. Right now there is no reason why the Fourth District Court of Eastern Middlesex, sitting at Woburn, should not be a full-time court. The volume of its business warranted such a status a few years ago. Of importance to the system is the fact that the location of this court is central to a very busy area, and its judge would not have to travel far from his own court in rendering service in other courts.

58. In the near future I anticipate that the Legislature will make the busy First District Court of Eastern Middlesex, sitting at Malden, a two-justice court. G. L., C. 218 is silent about the administrative authority in the two-justice courts. Sec. 6 of said chapter provides that "the senior justice shall be the first justice of the court," and that processes issued by the clerk shall bear the teste of the first justice. The section is silent, however, as to where the administrative authority lies in the two-justice courts in respect of such matters as appointment of probation officers and

¹ It is not a valid excuse to say that most of the loot came from the tax collector's pocket.

court officers and temporary clerks, or the approval of the clerk's appointments of his assistant clerks and temporary assistant clerks. For greater clarity I suggest an amendment to Sec. 6 as set forth in the draft bill which is Appendix V.

59. I have already recommended, par. 42, and Appendix II, an amendment to the removal statute, Sec. 104 of G. L., C. 231.

MUNICIPAL COURT OF THE CITY OF BOSTON

60. This continues to be a busy court, particularly in disposing of a substantial caseload of transferred and remanded cases from the Superior Court. Most of the retransferred cases analyzed in par. 41 had come back to the Superior Court from this Court. The analysis definitely puts this court's performance in a creditable light. The number of cases under the Uniform Reciprocal Support Law, G. L., C. 273A as amended, particularly those from other states, continues to increase. The amount of money collected increased by \$12,000, or 20 per cent.

BOSTON JUVENILE COURT

61. It is at least a hopeful sign that the statistics pertaining to this court show a decline in the number of complaints in all categories.

Respectfully submitted,

JOSEPH K. COLLINS,
Executive Secretary

301 New Court House
Boston, Massachusetts

APPENDIX I

COMPUTATION OF THE COSTS OF OPERATING THE COURTS

The following sources of information furnished the bases for determining the cost of administering and operating the various courts of the Commonwealth.

1. Public Document No. 29 (Annual Report on the statistics of county finances for the year ending December 31, 1961, Bureau of Accounts, Department of Corporations and Taxation).
2. House Bill No. 3550, 1962 Session (estimates of county receipts and expenditures for the year ending December 31, 1962).
3. Budget Recommendations of his Excellency, Governor John A. Volpe, for the fiscal year beginning July 1, 1962, and ending June 30, 1963.
4. Financial Report of the Comptroller of the Commonwealth for the fiscal year ending June 30, 1962.
5. City of Boston and County of Suffolk Budget Recommendations for the fiscal year 1962.
6. Summary of receipts and expenditures for the fiscal year ending December 31, 1961, developed from the records of the Auditing Department, City of Boston.
7. Records of Real Property Division of the City of Boston (material developed by personal contact and conference).
8. Records of County Commissioners and Treasurers examined.

The following schedules give the details of the cost of operating all the courts in the Commonwealth for the twelve-month period reported. There is an over-all increase of a little over 7.3%. This is due in great part to the increased cost of operating the District Courts, only part of which is reflected in the period reported on.

NET COSTS OF COURTS PAID BY THE COMMONWEALTH

(For fiscal year ending June 30, 1962)

Supreme Judicial Court	\$ 350,495.85
Superior Court	857,682.78
Probate and Insolvency Courts	906,591.24
Land Court	281,579.82
Board of Bar Examiners	17,628.81
Judicial Council	91,821.01
Administrative Committee of the District Courts	15,100.00
Pensions (Retired Judges)	99,517.44
Probation Service	619,589.37
Suffolk County Courthouse Maintenance (Acts of 1935, Chapter 474)	207,587.25
GRAND TOTAL	<u>\$3,447,593.57</u>

SUPREME JUDICIAL COURT

Justices' Salaries	\$155,000.00
Justices' Travel	3,000.00
Clerk's Salary	16,500.00
Clerical Assistance to Clerk	5,513.00
Clerical Assistance to Justices	79,403.48
Court Expenses	9,650.00
Court Officers and Messenger Salaries	6,886.00
Clerk and Assistant Clerks for Suffolk County Salaries	6,670.00
Social Law Library	3,500.00
Office of Executive Secretary	34,109.17
Reporter of Decisions Salary	15,000.00
Reporter of Decisions Clerical Assistance and Expenses	18,187.55
Total (Gross)	<u>\$353,419.20</u>
Less—Receipts	<u>—2,923.35</u>
TOTAL (NET)	<u>\$350,495.85</u>

SUPERIOR COURT

Justices' Salaries	\$718,206.45
Justices' Travel and Expenses	48,765.77
Assistant Clerk (Suffolk County)	1,500.00
Court Expenses	42,420.86
District Court Justices in Superior Court	
Salaries	28,688.09
Expenses	10,025.41
Special District Court Justices (G. L., c. 212, s. 14E)	10,725.00
Total (Gross)	<u>\$860,331.58</u>
Less—Receipts	<u>—2,648.80</u>
TOTAL (NET)	<u>\$857,682.78</u>

PROBATE AND INSOLVENCY COURTS

Judges' Salaries (Additionalittings)	\$ 5,000.00
Judges' Expenses (Additionalittings)	870.62
Reimbursement for Official Bonds	500.00
Administrative Committee Expenses	124.68
	<hr/>
	\$ 6,495.30

BARNSTABLE COUNTY

Judge's Salary	\$ 14,000.00
Register's Salary	10,500.00
Assistant Register's Salary	7,875.00
Clerical Assistance to Register	15,584.00
	<hr/>
	\$ 47,959.00

BERKSHIRE COUNTY

Judge's Salary	\$ 14,000.00
Register's Salary	10,500.00
Assistant Register's Salary	7,875.00
Clerical Assistance to Register	21,739.00
	<hr/>
	\$ 54,114.50

BRISTOL COUNTY

Judges' Salaries (2)	\$ 32,000.00
Register's Salary	12,000.00
Assistant Registers' Salaries (2)	17,400.00
Clerical Assistance to Register	57,089.95
	<hr/>
	\$ 118,489.95

DUKES COUNTY

Judge's Salary	\$ 6,000.00
Register's Salary	4,950.00
Clerical Assistance to Register	3,670.25
	<hr/>
	\$ 14,620.25

ESSEX COUNTY

Judges' Salaries (2)	\$ 34,000.00
Register's Salary	12,750.00
Assistant Registers' Salaries (3)	26,775.00
Clerical Assistance to Register	64,988.08
	<hr/>
	\$ 138,513.08

FRANKLIN COUNTY

Judge's Salary	\$ 13,999.96
Register's Salary	10,500.00
Assistant Register's Salary	7,875.00
Clerical Assistance to Register	6,987.12
	<hr/>
	\$ 39,362.08

HAMPDEN COUNTY

Judges' Salaries (2)	\$ 32,000.00
Register's Salary	12,000.00
Assistant Registers' Salaries (3)	25,200.00
Clerical Assistance to Register	62,540.73
	<hr/>
	\$ 131,740.73

HAMPSHIRE COUNTY

Judge's Salary	\$ 14,000.00
Register's Salary	10,500.00
Assistant Register's Salary	7,875.00
Clerical Assistance to Register	8,213.55
	<hr/>
	\$ 40,588.55

MIDDLESEX COUNTY

Judges' Salaries (3)	\$ 54,000.00
Register's Salary	13,500.00
Assistant Registers' Salaries (5)	43,875.00
Clerical Assistance to Register	177,495.62
	<hr/>
	\$ 288,870.62

NANTUCKET COUNTY

Judge's Salary	\$ 6,000.00
Register's Salary	4,950.00
Clerical Assistance to Register	3,670.25
	<hr/>
	\$ 14,620.25

NORFOLK COUNTY

Judges' Salaries (3)	\$ 54,000.00
Register's Salary	13,500.00
Assistant Registers' Salaries (3)	36,450.00
Clerical Assistance to Register	62,076.35
	<hr/>
	\$ 166,026.35

PLYMOUTH COUNTY

Judge's Salary	\$ 14,000.00
Register's Salary	10,500.00
Assistant Register's Salary	7,875.00
Clerical Assistance to Register	34,376.86
	<hr/>
	\$ 66,751.86

SUFFOLK COUNTY

Judges' Salaries (3)	\$ 54,000.00
Register's Salary	13,500.00
Assistant and Deputy Assistant Registers' Salaries (7)	43,447.93
Clerical Assistance to Register	214,605.39
	<hr/>
	\$ 325,553.32

WORCESTER COUNTY

Judges' Salaries (2)	\$ 34,000.00
Register's Salary	12,750.00
Assistant Registers' Salaries (4)	34,424.63
Clerical Assistance to Register	66,822.88
	<hr/>
	\$ 147,997.51

Total (Gross)	\$1,601,703.35
Less—Receipts	—695,112.11
	<hr/>

TOTAL (NET)	\$ 906,591.24
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LAND COURT

Judges and Statutory Officers' Salaries	\$ 71,250.00
Administration Expenses	332,496.49
Total (Gross)	\$403,746.49
Less—Receipts	—122,166.67
Total (Net)	\$281,579.82

BOARD OF BAR EXAMINERS

Administration Expenses	\$ 39,000.81
Less—Receipts	—21,372.00
Total (Net)	\$ 17,628.81

PENSIONS

Retired Judges	\$ 99,517.44
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JUDICIAL COUNCIL

Administration Expenses	\$ 7,329.04
Massachusetts Defenders Committee Administration Expenses	84,491.97
Total	\$ 91,821.00

ADMINISTRATIVE COMMITTEE OF DISTRICT COURTS

Administration Expenses	\$ 15,100.00
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PROBATION SERVICE

Office of Commissioner of Probation Salaries and Administration Expenses	\$283,858.10
Committee on Probation Administration Expenses	560.00
	\$284,418.10
Superior Court*	
Probation Officers, Salaries	\$327,782.27
Office—Supervisor of Probation	7,389.00
	\$335,171.27
Total	\$619,589.37

SUFFOLK COUNTY COURTHOUSE

Maintenance (Acts of 1935, Chapter 474)	\$ 207,587.25
TOTAL	\$3,447,593.57

* (By Acts of 1956, Chapter 731, Section 29, compensation of probation officers appointed for the Superior Court is paid by the Commonwealth.)

SUFFOLK COUNTY
SUMMARY OF COURT EXPENDITURES

	<i>Gross</i>	<i>Net</i>
Supreme Judicial Court	\$ 99,597.11	\$ 96,876.11
Superior Court	2,334,651.77	2,180,499.52
Probate and Insolvency Courts	85,692.88	85,648.88
Municipal Court of the City of Boston	1,017,690.50	475,058.22
Municipal Court of the Charlestown District	108,491.06	88,525.08
East Boston District Court	127,228.04	107,798.88
Municipal Court of the South Boston District	116,005.06	82,484.84
Municipal Court of the Dorchester District	205,097.03	148,944.24
Municipal Court of the Roxbury District	487,159.78	359,623.89
Municipal Court of the West Roxbury District	150,202.37	109,464.29
Municipal Court of the Brighton District	102,347.07	48,051.96
District Court of Chelsea	131,956.43	115,027.46
Boston Juvenile Court	149,481.11	149,476.11
Pemberton Square Court House	711,243.13	502,065.99
Social Law Library	2,000.00	2,000.00
Mental Health	51,159.74	50,007.54
Pensions and Annuities	121,645.76	121,645.76
Total	<u>\$6,001,648.84</u>	<u>\$4,723,198.77</u>

SUFFOLK COUNTY
CITY OF BOSTON
COUNTY COURT EXPENDITURES

SUPREME JUDICIAL COURT

Clerk's Office for Suffolk County		
Salaries & Expenses	\$99,597.11	
Less—Receipts		—\$2,720.50
Total (Net)		<u>\$96,876.61</u>

SUPERIOR COURT

General Expenses*		
Salaries & Expenses		\$140,158.32
Court Officers' Division**		
Salaries & Expenses		364,246.28
Criminal Expenses		
Clerks & Clerical		
Assistants, etc.		
Salaries & Expenses	\$288,842.90	
Jurors (Fees, etc.)	116,802.35	
Witnesses (Fees, etc.)	52,954.81	
District Attorney's		
Office	241,592.03	
Probation Department	87,492.21	
Total (Gross) Criminal ..	<u>\$787,684.30</u>	
Less—Receipts		—\$62,660.25
Total (Net) Criminal ..		<u>\$725,024.05</u>

*(Stenographic & confidential messenger; also furnishes supplies, materials and equipment for both Civil and Criminal Sessions.)

** (Deputy Sheriffs & Court Officers; salaries, expenses, etc., for Civil and Criminal Sessions.)

Civil Expenses

Clerks & Clerical

Assistants, etc.

Salaries & Expenses \$605,997.10

Masters 26,267.36

Auditors 156,779.92

Jurors (Fees, etc.) 253,518.49

Total (Gross) Civil \$1,042,562.87

Less—Receipts —\$91,492.00

Total (Net) Civil \$951,070.87

Grand Total (Net)

Superior Court \$2,180,499.52

PROBATE AND INSOLVENCY COURTS

General Expenses

Salaries & Expenses \$85,692.88

Less—Receipts —\$44.00

Total (Net) \$85,648.88

MUNICIPAL COURT OF THE CITY OF BOSTON

General Expenses

Salaries & Expenses \$1,017,690.50

Less—Receipts —\$542,632.28

Total (Net) \$475,058.22

MUNICIPAL COURT OF THE CHARLESTOWN DISTRICT

General Expenses

Salaries & Expenses \$97,896.96

Maintenance* 10,594.10

Total (Gross) \$108,491.06

Less—Receipts —\$19,965.98

Total (Net) \$88,525.08

*(About one-half of building is used by Police Dept., and Civil Defense; heating expense is paid by Police Dept.)

EAST BOSTON DISTRICT COURT

General Expenses

Salaries & Expenses \$106,247.64

Maintenance* 20,980.40

Total (Gross) \$127,228.04

Less—Receipts —\$19,429.16

Total (Net) \$107,798.88

*(Building used 100% by Court; Police Dept. supplies heat; Operating Personnel charged to Boston Real Property Division.)

MUNICIPAL COURT OF THE SOUTH BOSTON DISTRICT

General Expenses

Salaries & Expenses \$101,589.51

Maintenance* 14,415.55

Total (Gross) \$116,005.06

Less—Receipts —\$33,520.22

Total (Net) \$82,484.84

*(Court uses about one-third of building.)

MUNICIPAL COURT OF THE DORCHESTER DISTRICT

General Expenses		
Salaries & Expenses	\$180,075.03	
Maintenance*	25,022.00	
	<hr/>	
Total (Gross)	\$205,097.03	
Less—Receipts	—\$56,152.79	
	<hr/>	
Total (Net)		\$148,944.24

*(Building used 100% by Court.)

MUNICIPAL COURT OF THE ROXBURY DISTRICT

General Expenses		
Salaries & Expenses	\$452,223.75	
Maintenance*	34,936.03	
	<hr/>	
Total (Gross)	\$487,159.78	
Less—Receipts	—\$127,535.89	
	<hr/>	
Total (Net)		\$359,623.89

*(Building used 100% by Court.)

MUNICIPAL COURT OF THE WEST ROXBURY DISTRICT

General Expenses		
Salaries & Expenses	\$126,950.72	
Maintenance*	23,251.65	
	<hr/>	
Total (Gross)	\$150,202.37	
Less—Receipts	—\$40,738.08	
	<hr/>	
Total (Net)		\$109,464.29

*(Building used 100% by Court.)

MUNICIPAL COURT OF THE BRIGHTON DISTRICT

General Expenses		
Salaries & Expenses	\$80,102.07	
Maintenance*	22,245.00	
	<hr/>	
Total (Gross)	\$102,347.07	
Less—Receipts	—\$54,295.11	
	<hr/>	
Total (Net)		\$48,051.96

*(75% of building is used by Court.)

DISTRICT COURT OF CHELSEA

General Expenses		
Salaries & Expenses	\$113,747.31	
Maintenance*	18,209.12	
	<hr/>	
Total (Gross)	\$131,956.43	
Less—Receipts	—\$16,928.97	
	<hr/>	
Total (Net)		\$115,027.46

*(About two-thirds of building is used by Court.)

BOSTON JUVENILE COURT

General Expenses		
Salaries & Expenses	\$149,481.11	
Less—Receipts	—\$5.00	
	<hr/>	
Total (Net)		\$149,476.11

PEMBERTON SQUARE COURT HOUSE

Maintenance		
Salaries & Expenses	\$711,243.13	
Less—Statutory share of Commonwealth & telephone commis- sions		—\$209,177.14
Total (Net)		\$502,065.99
General Expenses	SOCIAL LAW LIBRARY	\$2,000.00
General Expenses	MENTAL HEALTH	
Salaries & Expenses	\$51,159.74	
Less—Receipts		—\$1,152.20
Total (Net)		\$50,007.54
General Expenses*	PENSIONS AND ANNUITIES	\$121,645.76

*(This represents annual payment to non-contributing members charged to Suffolk County for Judiciary, etc.)

BARNSTABLE
COUNTY COURT EXPENDITURES

Clerk of Courts		
Salaries & Expenses	\$22,940.60	
Probate Court & Registry		
Salaries & Expenses	9,159.69	
Law Libraries		
Salaries & Expenses	5,007.30	
Superior Court		
Criminal		
Court Officers & Stenographers	\$5,909.00	
Probation Department	4,433.23	
Jurors (Fees, etc.)	14,128.24	
Witnesses (Fees, etc.) ..	3,677.74	
District Attorney's Office	4,090.36	
Misc. Expenses	2,003.27	
		34,241.84
Civil		
(Including Supreme Ju- dicial & Land Cts.)		
Court Officers & Stenographers	\$5,755.00	
Jurors (Fees, etc.)	7,855.02	
Auditors	4,125.00	
Masters	3,397.50	
Misc. Expenses	4,259.02	
		25,391.54
District Courts		
Salaries & Expenses (Includes courthouse rentals)	116,158.83	
Courthouse Mainte- nance & Operation	50,565.78	
Total (Gross)	\$263,465.58	
Less—Receipts		—\$38,897.48
Total (Net)		\$224,568.10

BERKSHIRE
COUNTY COURT EXPENDITURES

Clerk of Courts			
Salaries & Expenses	\$23,799.44		
Probate Court & Registry			
Salaries & Expenses	7,181.62		
Law Libraries			
Salaries & Expenses	8,996.08		
Superior Court			
<i>Criminal</i>			
Court Officers & Stenographers	\$9,128.46		
Probation Department	5,384.36		
Jurors (Fees, etc.)	19,474.11		
Witnesses (Fees, etc.) ..	3,083.21		
District Attorney's Office	2,506.54		
Misc. Expenses	2,244.49		
		41,821.17	
<i>Civil</i>			
(Including Supreme Ju- dicial & Land Cts.)			
Court Officers & Stenographers	\$8,232.20		
Jurors (Fees, etc.)	19,344.67		
Auditors	10,368.00		
Masters	3,343.95		
Referees	706.82		
Misc. Expenses	952.41		
		42,948.05	
District Courts			
Salaries & Expenses (Includes courthouse rentals)	204,812.04		
Courthouse Mainte- nance & Operation ..	21,495.65		
Total (Gross)		\$351,054.05	
Less—Receipts		—\$79,850.10	
Total (Net)			\$271,203.95

BRISTOL
COUNTY COURT EXPENDITURES

Clerk of Courts	
Salaries & Expenses	\$90,522.04
Probate Court & Registry	
Salaries & Expenses	20,206.38
Law Libraries	
Salaries & Expenses	29,581.16
Superior Court	
<i>Criminal</i>	
Court Officers & Stenographers	\$17,554.52
Probation Department	17,596.71
Jurors (Fees, etc.)	48,005.44
Witnesses (Fees, etc.) ..	11,027.67
District Attorney's Office	18,799.28
Misc. Expenses	6,265.79
	119,249.41

Civil

(Including Supreme Judicial & Land Cts.)

Court Officers &

Stenographers	\$45,488.23
Jurors (Fees, etc.)	61,952.17
Auditors	17,937.75
Masters	3,563.50
Misc. Expenses	1,593.81

130,535.46

District Courts

Salaries & Expenses

(Includes courthouse rentals)

384,838.64

Courthouse Maintenance & Operation ..

176,823.52

Courthouse Bonded

Debt Int. pd. 1961

6,377.00

Total (Gross)

\$958,133.61

Less—Receipts

—\$138,031.73

Total (Net)

\$820,101.88

DUKES COUNTY
COUNTY COURT EXPENDITURES

Clerk of Courts

Salaries & Expenses

\$4,934.02

Probate Court &

Registry

Salaries & Expenses

1,558.69

Law Libraries

Salaries & Expenses

796.59

Superior Court

Criminal

Court Officers &

Stenographers \$750.20

Jurors (Fees, etc.) 2,214.00

Witnesses (Fees, etc.) .. 167.80

District Attorney's

Office 245.48

Misc. Expenses 463.57

3,841.05

Civil

(Including Supreme Judicial & Land Cts.)

Court Officers &

Stenographers \$255.46

Witnesses (Fees, etc.) .. 55.90

Auditors 72.00

383.36

District Courts

Salaries & Expenses

(Includes courthouse rentals)

18,238.75

Courthouse Maintenance & Operation ..

4,588.02

Courthouse Bonded

Debt Int. pd. 1961

5,170.00

Total (Gross)

\$39,510.48

Less—Receipts

—\$2,871.13

Total (Net)

\$36,639.35

ESSEX

COUNTY COURT EXPENDITURES

Clerk of Courts		
Salaries & Expenses	\$129,174.82	
Probate Court & Registry		
Salaries & Expenses	30,474.87	
Law Libraries		
Salaries & Expenses	27,872.54	
Superior Court		
<i>Criminal</i>		
Court Officers & Stenographers	\$22,757.61	
Probation Department	18,867.80	
Jurors (Fees, etc.)	51,465.44	
Witnesses (Fees, etc.) ..	14,445.76	
Transcripts, Process, Extradition	8,380.74	
District Attorney's Office	25,797.08	
Misc. Expenses	7,414.48	
	<hr/>	149,128.91
<i>Civil</i>		
(Including Supreme Ju- dicial & Land Cts.)		
Court Officers & Stenographer	\$49,333.34	
Jurors (Fees, etc.)	107,622.30	
Auditors	34,464.88	
Masters	5,838.50	
Misc. Expenses	3,377.31	
	<hr/>	200,636.33
District Courts		
Salaries & Expenses (Includes courthouse rentals)	620,857.57	
Courthouse Mainte- nance & Operation	157,389.09	
Courthouse Bonded Debt Int. pd. 1961	5,337.50	
	<hr/>	
Total (Gross)	\$1,320,871.63	
Less—Receipts		—\$169,941.71
		<hr/>
Total (Net)		\$1,150,929.92

FRANKLIN

COUNTY COURT EXPENDITURES

Clerk of Courts	
Salaries & Expenses	\$18,535.19
Probate Court & Registry	
Salaries & Expenses	3,097.40
Law Libraries	
Salaries & Expenses	8,616.65
Superior Court	
<i>Criminal</i>	
Court Officers & Stenographers	\$2,118.22
Probation Department	1,254.05
Jurors (Fees, etc.)	8,016.70
Witnesses (Fees, etc.) ..	1,304.71

District Attorney's Office	2,088.37		
Misc. Expenses	2,271.17		
		17,053.22	
<i>Civil</i> (Including Supreme Judicial & Land Cts.)			
Court Officers & Stenographers	\$4,938.51		
Jurors (Fees, etc.)	13,931.54		
Auditors	193.50		
Masters	67.50		
Misc. Expenses	1,433.70		
		20,564.75	
District Courts			
Salaries & Expenses (Includes courthouse rentals)		56,732.78	
Courthouse Maintenance & Operation		13,362.94	
Total (Gross)		\$137,962.93	
Less—Receipts			—\$18,009.91
Total (Net)			\$119,953.02

HAMPDEN

COUNTY COURT EXPENDITURES

Clerk of Courts			
Salaries & Expenses		\$71,384.70	
Probate Court & Registry			
Salaries & Expenses		32,849.29	
Law Libraries			
Salaries & Expenses		22,097.60	
Superior Court			
<i>Criminal</i>			
Court Officers & Stenographers	\$19,837.60		
Probation Department	11,601.40		
Jurors (Fees, etc.)	31,087.84		
Witnesses (Fees, etc.) ..	7,474.75		
District Attorney's Office	6,906.63		
Misc. Expenses	4,926.78		
		81,835.00	
<i>Civil</i> (Including—Supreme Judicial & Land Cts.)			
Court Officers & Stenographers	\$65,666.57		
Jurors (Fees, etc.)	88,658.12		
Auditors	21,249.00		
Masters	1,793.25		
Misc. Expenses	1,177.61		
		178,544.55	
District Courts			
Salaries & Expenses (Includes courthouse rentals)		513,542.81	

Courthouse Maintenance & Operation	107,594.80		
Total (Gross)		\$1,007,897.25	
Less—Receipts			—\$166,892.18
Total (Net)			\$841,005.07

HAMPSHIRE COUNTY COURT EXPENDITURES

Clerk of Courts			
Salaries & Expenses	\$25,127.82		
Probate Court & Registry			
Salaries & Expenses	4,291.89		
Law Libraries			
Salaries & Expenses	8,080.50		
Superior Court			
<i>Criminal</i>			
Court Officers & Stenographers	\$2,772.00		
Probation Department	1,733.67		
Jurors (Fees, etc.)	10,660.27		
Witnesses (Fees, etc.) ..	2,245.38		
District Attorney's Office	1,659.62		
Misc. Expenses	1,850.72		
		20,921.66	
<i>Civil</i>			
(Including Supreme Judicial & Land Cts.)			
Court Officers & Stenographers	\$6,501.68		
Jurors (Fees, etc.)	15,763.95		
Auditors	3,300.75		
Masters	1,516.50		
Misc. Expenses	6,005.21		
		33,088.09	
District Courts			
Salaries & Expenses (Includes courthouse rentals)	98,798.57		
Courthouse Maintenance & Operation	17,156.35		
Total (Gross)		\$207,464.41	
Less—Receipts			—\$25,156.50
Total (Net)			\$182,307.91

MIDDLESEX COUNTY COURT EXPENDITURES

Clerk of Courts	
Salaries & Expenses	\$305,521.55
Probate Court & Registry	
Salaries & Expenses	65,752.81
Law Libraries	
Salaries & Expenses	48,729.02

Superior Court

Criminal

Court Officers &

Stenographers \$110,372.37

Probation Department 49,735.03

Jurors (Fees, etc.) 160,143.08

Witnesses (Fees, etc.) .. 54,767.04

District Attorney's

Office 101,328.48

Misc. Expenses 28,278.55

504,624.55

Civil(Including Supreme Ju-
dicial & Land Cts.)

Court Officers &

Stenographers \$161,295.69

Jurors (Fees, etc.) 179,286.52

Auditors 101,407.20

Masters 13,277.25

Misc. Expenses 7,041.41

462,308.07

District Courts

Salaries & Expenses

(Includes courthouse
rentals) \$1,563,159.04Courthouse Mainte-
nance & Operation 360,068.76

Total (Gross)

\$3,310,163.80

Less—Receipts

—\$375,685.22

Total (Net)

\$2,934,478.58

NANTUCKET

COUNTY COURT EXPENDITURES

Clerk of Courts

Salaries & Expenses \$3,800.00

Law Libraries

Salaries & Expenses 380.50

Superior Court*

Criminal & Civil

Grand Jury \$406.40

Probation Department 68.02

Trial Jury 344.10

Stenographer 69.45

Sheriff & Deputies 293.15

Witnesses 47.30

Rent 60.00

Misc. Expenses 130.95

1,419.37

District Courts

Salaries & Expenses

(Includes courthouse
rentals) 13,865.24Courthouse Mainte-
nance & Operation 1,474.43

Total (Gross)

\$20,939.54

Less—Receipts

—\$2,679.38

Total (Net)

\$18,260.16

*(No expenditures for Auditors, Masters, etc.; Civil and criminal expenditures not separated.)

NORFOLK
COUNTY COURT EXPENDITURES

Clerk of Courts	
Salaries & Expenses	\$69,674.02
Probate Court & Registry	
Salaries & Expenses	50,537.20
Law Libraries	
Salaries & Expenses	6,858.38
Superior Court	
<i>Criminal</i>	
Court Officers & Stenographers	\$35,548.48
Probation Department	15,536.25
Jurors (Fees, etc.)	62,688.08
Witnesses (Fees, etc.) ..	20,385.05
District Attorney's Office	17,259.91
Misc. Expenses	5,795.39
	<hr/>
	157,213.16

Civil

(Including Supreme Judicial & Land Cts.)

Court Officers & Stenographers	\$29,048.63
Jurors (Fees, etc.)	49,284.23
Auditors	39,844.75
Masters	2,560.50
Misc. Expenses	1,528.84
	<hr/>

122,266.97

District Courts

Salaries & Expenses (Includes courthouse rentals)	579,981.88
Courthouse Maintenance & Operation	167,001.61
Courthouse Bonded Debt Int. pd. 1961	18,050.00
	<hr/>

Total (Gross)	\$1,171,583.22
Less—Receipts	—\$145,736.36

Total (Net)

\$1,025,846.86

PLYMOUTH
COUNTY COURT EXPENDITURES

Clerk of Courts	
Salaries & Expenses	\$61,035.38
Probate Court & Registry	
Salaries & Expenses	47,272.94
Law Libraries	
Salaries & Expenses	8,044.17
Superior Court	
<i>Criminal</i>	
Court Officers & Stenographers	\$19,388.24
Probation Department	13,914.92
Jurors (Fees, etc.)	55,532.47
Witnesses (Fees, etc.) ..	11,842.96

District Attorney's	
Office	10,534.06
Misc. Expenses	4,592.90

115,804.65

Civil

(Including Supreme Judicial & Land Cts.)

Court Officers & Stenographers	\$23,125.46
Jurors (Fees, etc.)	34,310.69
Auditors	15,063.75
Masters	3,858.75
Misc. Expenses	879.40

77,602.55

District Courts

Salaries & Expenses
(Includes courthouse
rentals)

Courthouse Maintenance & Operation

296,065.42

62,472.03

Total (Gross)

Less—Receipts

\$668,297.14

—\$92,309.51

Total (Net)

\$575,987.63

WORCESTER

COUNTY COURT EXPENDITURES

Clerk of Courts

Salaries & Expenses

Probate Court & Registry

Salaries & Expenses

Law Libraries

Salaries & Expenses

Superior Court

\$168,533.66

26,925.31

37,557.62

Criminal

Court Officers &

Stenographers

Probation Department

Jurors (Fees, etc.)

Witnesses (Fees, etc.) ..

District Attorney's

Office

Misc. Expenses

\$29,591.50

19,841.52

58,876.60

16,659.88

22,372.74

11,547.75

158,889.99

Civil

(Includes Supreme Judicial & Land Cts.)

Court Officers &

Stenographers

Jurors (Fees, etc.)

Auditors

Masters

Misc. Expenses

\$81,710.95

139,297.83

57,074.28

5,715.47

21,949.75

305,748.28

District Courts

Salaries & Expenses
(Includes courthouse
rentals)

658,702.93

Courthouse Maintenance & Operation	192,253.92		
Courthouse Bonded Debt Int. pd. 1961	43,600.00		
		<u>\$1,592,211.71</u>	
Total (Gross)			—\$193,989.88
Less—Receipts			<u>\$1,398,221.83</u>
Total (Net)			

SUMMARY OF COSTS OF ADMINISTERING AND OPERATING ALL
COURTS IN THE COMMONWEALTH OF MASSACHUSETTS

	<i>Gross</i>	<i>Net</i>
Commonwealth of Massachusetts	\$ 4,291,816.50	\$ 3,447,593.57
Barnstable	263,465.58	224,568.10
Berkshire	351,054.05	271,203.95
Bristol	958,133.61	820,101.88
Dukes County	39,510.48	36,639.35
Essex	1,320,871.63	1,150,929.92
Franklin	137,962.93	119,953.02
Hampden	1,007,897.25	841,005.07
Hampshire	207,464.41	182,307.91
Middlesex	3,310,163.80	2,934,478.58
Nantucket	20,939.54	18,260.16
Norfolk	1,171,583.22	1,025,846.86
Plymouth	668,297.14	575,987.63
Suffolk	6,001,648.84	4,723,198.77
Worcester	1,592,211.71	1,398,221.83
	<u>\$21,343,020.69</u>	<u>\$17,770,296.60</u>
Commitments*		347,631.37
Total		<u>\$18,117,927.97</u>

*(Total shown does not include Suffolk County. Some of the expense attendant to commitments is a proper court expense, but to determine the actual judicial cost would require an examination of each and every voucher submitted for payment to the county treasurers in connection with commitments.)

APPENDIX II

AN ACT RELATIVE TO THE REMOVAL OF ACTIONS
FROM THE DISTRICT COURTS

Be it enacted, etc.

Chapter 231 of the General Laws is hereby amended by striking out section 104 as amended through chapter 352, section 1 of the acts of nineteen hundred and sixty, and inserting in place thereof the following section:—

Section 104. Removal from District Court

No other party to such action shall be entitled to an appeal. In lieu thereof any such other party may within two days after the time allowed for entering his appearance file in said court a claim of trial by the superior court together with the sum of five dollars for the entry of the cause of each plaintiff in the superior court, and, except as provided in section one hundred and seven, a bond in the penal sum of one hundred dollars, with such surety or sureties as may be approved by the plaintiff or the clerk or an assistant clerk of said district court, payable to the other party or parties to the cause, conditioned to satisfy any judgment for costs which may be entered against him in the superior court in said cause within thirty days after the entry thereof. The clerk shall forthwith transmit the papers and entry fee in the cause to the clerk of the superior court and the same shall proceed as though then originally entered there, EXCEPT THAT IF THE AD DAMNUM IN THE WRIT DOES NOT EXCEED \$2,000, THE CASE SHALL BE TRIED FIRST IN THE DISTRICT COURT AS IF IT HAD BEEN TRANSFERRED THERE FROM THE SUPERIOR COURT UNDER THE PROVISIONS OF SECTION ONE HUNDRED AND TWO C OF THIS CHAPTER, AND IN SUCH EVENT THE DEFENDANT SHALL FILE SAID ENTRY FEE AND BOND WITHIN TEN DAYS AFTER NOTICE OF THE DECISION OR FINDING. SUCH FILING SHALL HAVE THE SAME EFFECT AS A REQUEST FOR RETRANSFER UNDER SAID SECTION ONE HUNDRED AND TWO C AND THE DECISION SHALL BE TRANSMITTED TO AND THE CASE TRIED IN THE SUPERIOR COURT SUBJECT TO THE PROVISIONS OF SAID SECTION APPLICABLE TO RETRANSFERRED CASES.

Removal of a case under this section shall remove any default of a defendant entered for failure to appear and answer in the district court, EXCEPTING CASES IN WHICH THE AD DAMNUM DOES NOT EXCEED \$2,000.

APPENDIX III

AN ACT RELATIVE TO COMPENSATION OF DISTRICT COURT
JUDGES SITTING IN THE SUPERIOR COURT

Be it enacted, etc.

Section 5 of chapter 535 of the Acts of 1961 is hereby amended in the eighth line thereof by striking out the word "fifty" and substituting therefor the word:—seventy-five,—so that said section shall read as follows:—

Section 5. Justices of district courts when sitting in the Superior Court as provided in section two shall receive from the Commonwealth, in addition to their regular salaries, upon certificate of the Chief Justice of the Superior Court, the amount of expense incurred by them in the discharge of their duties in connection with such sessions and also such compensation for each court day, while so sitting, as will, when added to the per diem rate of his regular salary, computed as provided in section eighty-four of chapter two hundred and eighteen, amount to (fifty) SEVENTY-FIVE dollars a day. The compensation of a special justice for services in holding sessions of a district court in place of a justice of a district court while sitting in the superior court as provided in section two shall be paid by the county and shall not be deducted from the salary of the district court justice so sitting in the Superior Court, but shall be repaid to the county by the commonwealth.

NOTE: The material in parenthesis is to be deleted from the existing section and that in capitals is to be inserted.

APPENDIX IV

AN ACT RELATIVE TO EQUITY PRACTICE IN THE LAND COURT

Be it enacted, etc.

Section 1. General Laws, chapter one hundred and eighty-five is hereby amended by inserting SECTION 15A. ANY PROCEEDING UNDER THE EQUITY JURISDICTION OF THE LAND COURT SHALL BE SUBJECT TO THE PROVISIONS OF SECTIONS TWENTY-THREE, TWENTY-FOUR, TWENTY-FIVE AND TWENTY-FIVE A OF GENERAL LAWS, CHAPTER TWO HUNDRED AND FOURTEEN AS AMENDED.

Section 2. General Laws, chapter two hundred and thirty-one is hereby amended by striking out section one hundred and twenty-five A inserted by acts of nineteen hundred and forty-nine, chapter one hundred and seventy-one, section one, and inserting in place thereof the following section:—

Section 125A. Equity and Probate Appeals, Further Report of Material Facts Where Evidence Not Reported.

Upon appeal in any case, in equity or probate, where the evidence is not reported, the full court, if of opinion that a report of material facts required by or made under section twenty-three of chapter two hundred and fourteen, or section eleven of chapter two hundred and fifteen, OR SECTION FIFTEEN A OF CHAPTER ONE HUNDRED AND EIGHTY-FIVE is not sufficient to enable the court properly to adjudicate the subject matter involved, may in its discretion, by order transmitted to the trial court, direct the justice, or judge, to make such further report of facts as the full court shall deem necessary. Upon compliance with such direction, seven typewritten copies of such further report shall be filed by the clerk or register with the clerk of the supreme judicial court for the commonwealth for the use of the full court.

APPENDIX V

AN ACT PERTAINING TO THE ADMINISTRATIVE
AUTHORITY IN TWO-JUDGE DISTRICT COURTS

Section 6 of chapter 218 of the General Laws, as most recently amended by section 1 of chapter 744 of the Acts of 1956, is hereby further amended by adding two sentences at the end of the first paragraph, so that said paragraph shall read as follows:—

Each district court other than the municipal court of the city of Boston shall have one justice, except that the central district court of Worcester, district court of Springfield, municipal court of the Roxbury district and third district court of eastern Middlesex shall have two justices each. The senior justice in years of service shall be the first justice of the court. Citations, orders of notice, writs, executions and all other processes issued by the clerk of the court shall bear the teste of the first justice thereof.

The first justice shall be the administrative head of the court, and without limiting the foregoing, shall make all appointments of temporary clerks, of court officers and of probation officers, and shall approve appointments of assistant clerks and of temporary assistant clerks. When the first justice is absent and delay would injure the public interest, any justice of a district court designated by the chairman of the administrative committee shall act in his place.

APPENDIX VI

STATISTICS OF THE WORK ACCOMPLISHED BY THE VARIOUS COURTS

The following statistics set forth the civil and criminal entries in the various courts of the Commonwealth (law and equity) for the years ending June 30, 1962 and 1961.

CIVIL ENTRIES

	1962 6th Report	1961 5th Report
Supreme Judicial Court, law	869	869
Supreme Judicial Court, equity	61	82
	930	951
Superior Court, law	36,113	35,351
Superior Court, equity	4,717	4,527
	40,830	39,878
Land Court	5,259	5,144
Probate Courts, probate	35,506	33,156
Probate Courts, divorce	8,828	8,237
Probate Courts, commitments	1,323	1,419
	45,657	42,812
Municipal Court of the City of Boston, net after removals	21,369	21,203
Municipal Court of the City of Boston, sup- plementary process	1,490	1,658
Municipal Court of the City of Boston, small claims	1,468	1,582
Municipal Court of the City of Boston, re- ciprocal support	148	86
	24,475	24,520
District Courts, net after removals	78,323	75,930
District Courts, supplementary process	30,890	29,865
District Courts, small claims	75,564	76,565
District Courts, commitments	4,857	4,771
District Courts, reciprocal support	1,949	1,739
	191,583	188,870
Total civil entries	308,734	302,184
Superior Court, indictments	8,498	8,114
Superior Court, actions on bail bonds	39	47
Superior Court, complaints after waiver of indictments	32	34
	8,569	8,195
Municipal Court of the City of Boston, general	52,794	48,501
Municipal Court of the City of Boston, inquests	0	1
	52,794	48,502
Districts Courts, general	304,254	273,760
District Courts, inquests	23	21
	304,277	273,781
Boston Juvenile Court	886	1,050
Total criminal entries	366,526	331,528

The foregoing figures show an increase of about 6,500 civil entries and 35,000 criminal entries for the entire judicial system. The increase is, of course, greater in the lower courts, and, not shown

in the above civil figures were the transferred or remanded cases, 9,098 received by the district courts, and 1,911 by municipal court of the City of Boston. Likewise on the criminal side the great increase was in the lower courts, and most of the additional cases were automobile violations.

SUPREME JUDICIAL COURT

Of the 330 cases decided by the full court in the court year ending August 31, 1962, 69 were by rescript opinion and 261 by formal opinion. In 214 cases, 65%, the decision of the lower court was affirmed, in 9 cases, 3%, it was modified and affirmed; in 80, 24%, it was reversed, and 28, 8%, had been reported without decision by the lower court.

The origins of the cases by counties follows:—

Barnstable	7
Berkshire	4
Bristol	19
County of Dukes County	0
Essex	19
Franklin	1
Hampden	19
Hampshire	6
Middlesex	58
Nantucket	0
Norfolk	19
Plymouth	17
Suffolk	138
Worcester	23
TOTAL	330

There are 20 criminal appeals included in this total.

The cases came from the various courts as follows:—

Supreme Judicial Court, county court session, law	17	
Supreme Judicial Court, county court session, equity	11	
		28
Superior Court, law	156	
Superior Court, equity	86	
Superior Court, workmen's compensation cases	4	
		246
Land Court	7	
Probate Courts	36	
Municipal and district courts	13	
		56
TOTAL		330

I have already noted, paragraph 45, that one other case argued during the court year was decided October 3, 1962, by a divided court. It was a workmen's compensation case.

In addition to the foregoing cases the full court gave two advisory opinions as required by the Constitution.

SUPREME JUDICIAL COURT SINGLE JUSTICE
SESSION FOR THE COUNTY OF SUFFOLK

This session is traditionally called the county court. The statistics pertaining thereto show a marked increase, from 8 to 25, of appeals from decisions of the Appellate Tax Board. The number of corporations dissolved on 9 petitions filed by the Commissioner of Corporations and Taxation leaped from 2,000 to 6,320.

REPORT OF CLERK FOR SUFFOLK COUNTY

<i>Transferred to Superior Court</i>	<i>Prerogative Writs</i>	<i>Petitions for Admission to the Bar</i>
15	50	768
<i>Law Docket</i>		
Appeals from Decision of Appellate Tax Board		25
Petitions for Admission to the Bar		768
Petitions for Writs of Certiorari		8
Petitions for Writs of Error		20
Petitions for Writs of Habeas Corpus		9
Petition for Injunction		1
Petitions for Writs of Mandamus		11
Petition for Writ of Prohibition		1
Petition for Discharge under General Laws, chapter 123, section 51, (failure to serve proper notice)		1
Petitions for Discharge under General Laws, chapter 123, section 91, (restoration to sanity)		11
Petitions to establish truth of exceptions		10
Petitions under General Laws, chapter 211, section 3 (superintend- ence of courts)		3
Petition for stay of execution of sentence		1
Total entries on law docket		869
<i>Equity Docket</i>		
Bills of complaint		11
Appeals from orders of the department of public utilities, General Laws, chapter 25, section 5		6
Petitions for declaratory judgment		7
Petitions for dissolution under General Laws, chapter 155, section 50A (about 6,230 corporations)		9
Petitions for dissolution brought by individuals		5
Petition to establish truth of exceptions		1
Petition for leave to distribute assets		1
Bills for Instructions		2
Petitions to Suspend Decree		3
Petition for stay or modification of order entered by the Probate Court		1
Petitions under General Laws, chapter 152, section 17 re orders or decisions of reviewing board of W. C. C.		3
Petition under General Laws, chapter 204, section 12, re sale of church property		1
Petitions under General Laws, chapter 211, section 11, late entry of exceptions or report		5
Petition under General Laws, chapter 214, section 28 (re leave to appeal late)		1
Petitions under General Laws, chapter 214, section 22, modification of decree of Superior Court		3
Petitions under General Laws, chapter 214, section 32, transfer of causes between Supreme Judicial, Superior and Probate Courts		2
Total entries on equity docket		61
Total entries on both dockets		930

THE SUPERIOR COURT

The statistics for this court are referred to in the paragraphs (4-9) on court congestion, and in paragraph 51. An additional comment on the statistics might well be made with reference to that part of the common law docket designated since April 1, 1956 as the "Non-Triable Docket." The order establishing it specifies a number of obvious causes for transfer to this docket. In addition it contains a catch-all provision which in effect provides for a general house-cleaning of the common law docket each June. Since a large number of the cases so transferred in June are really triable cases, they get back on the trial list by motion in the following court year. However, this has been the pattern since the non-triable docket was established in 1956. From 1959 through 1962 there have been transferred to this docket each judicial year 3,000 to 3,500 cases but the average disposal rate of these cases has slightly exceeded a wash-out for, there were 8,108 remaining on the non-triable docket at the beginning of judicial year 1959 and 7,012 at the end of judicial year 1962.

The appellate division for the review of sentences under General Laws, Chapter 278, section 28A sat 20 days during the period covered. The following is the tabulation of its cases.

Number of appeals pending, June 30, 1961	95	
Number of appeals filed	301	
Total		396
Sentences modified	43	
Sentences increased	11	
Appeals dismissed	114	
Appeals withdrawn	174	
Appeals pending, June 30, 1962	54	
Total		396

CIVIL BUSINESS STATISTICS—SUPERIOR COURT FOR THE YEAR ENDING JUNE 30, 1962, AS REPORTED BY CLERKS OF SAID COURT

		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41																																																																																																																																																																																																																																																																																																																																																																																																																																													
COUNTIES	Law Cases Start of Year	No. Cases Entered During Year							Trials by Superior Court Justices				No. Jury Verdicts (Ordered—Not Ordered)				No. Findings (Law)		Non-trial Docket				Remaining Active— Law Docket End of Year		Disposed of				Triable at Issue Awaiting Trial		Enjoined	Remaining Undisposed of		Cases Marked Inactive		Inactive Dismissed		Days Superior Ct. Judges Sat	Equity																																																																																																																																																																																																																																																																																																																																																																																																																																																
		Removals							J.	N.J.	O.	N.O.	O.	N.O.	Ptff.	Dft.	J.	N.J.	J.	N.J.	J.	N.J.	J.		N.J.		J.	N.J.	J.	N.J.		J.	N.J.	J.	N.J.	J.	N.J.		J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.	N.J.	J.

CRIMINAL BUSINESS STATISTICS OF THE SUPERIOR

	Barnstable	Berkshire	Bristol	Dukes County
Number remaining at first of the year (7/1/61)	67	217	472	11
Number of indictments returned	149	91	610	7
Number of appeal cases entered	100	114	542	17
Appeals withdrawn before sitting following entry	20	28	40	8
Appeals withdrawn after next sitting under G. L., C. 278, § 25	5	23	68	0
Appeals withdrawn during sitting*	16	2	95	0
Number of actions on bail bonds for recognizances entered	0	0	0	0
Number disposed of in previous years brought forward for redispotion	0	0	1	0
Indictments waived	116	59	142	0
Number of complaints filed after waiver of indictment	0	0	0	0
Number disposed of during year	309	155	1,064	27
Number remaining at end of year	82	273	500	8
Number of trials during year by superior court justices	23	6	90	8
Number of trials during year by district court judges	27	0	114	0
Number awaiting trial at end of year	66	212	394	8
Number of days during which a superior court justice sat for trials, dispositions or redispotions	27	22	72	6
Number of days during which a district court judge sat in superior court	17	0	54	0

*In Suffolk County appeals in this category are included in the preceding classification.

COURT FOR THE YEAR ENDING JUNE 30, 1962

Essex	Franklin	Hampden	Hampshire	Middlesex	Nantucket	Norfolk	Plymouth	Suffolk	Worcester	Totals
227	40	308	148	646	0	491	235	1,083	126	4,071
427	23	446	91	1,436	0	750	592	3,154	722	8,498
569	50	321	66	1,371	13	560	616	1,968	251	6,558
54	4	22	5	0	6	40	37	196	24	484
30	9	41	28	327	0	19	20	98	22	690
83	3	16	6	84	0	71	121	0	33	530
5	0	0	0	9	0	0	0	25	0	39
70	0	0	0	169	0	57	208	652	41	1,198
98	6	82	17	81	0	17	22	56	414	1,110
0	0	5	0	17	0	0	0	0	10	32
1,028	54	581	144	2,639	3	938	1,142	5,421	1,263	14,768
201	49	502	139	694	4	807	353	1,223	222	5,057
66	2	39	16	495	5	164	71	826	172	1,983
79	5	28	15	190	0	111	121	197	108	995
193	38	467	51	486	4	778	14	912	212	3,835
93	10	47	11	413	4	102	69	594	105	1,575
48	5	34	14	84	0	49	50	120	61	536

PROBATE COURTS

This year the Probate Courts started to use a new form for reporting their statistics. Since the reports have come in the Administrative Committee has taken further steps in an attempt to produce more meaningful statistics which will more accurately reflect the work of these courts. The statistics show substantial increases in almost every category, and, lamentably divorce and separate support decrees are among them. It is to be regretted that the legislature did not appropriate adequate funds to implement the Conciliation Division experiments which were to be conducted in Norfolk and Worcester counties under C. 620, Acts of 1961.

EXTRACTS FROM THE REPORTS OF THE REGISTERS OF

	Barnstable	Berkshire	Bristol	Dukes
Original entries (including divorce)	910	1,396	2,873	124
Administration allowed	164	312	814	25
Wills allowed	296	312	694	52
Guardians appointed	33	131	159	9
Conservators appointed	18	52	99	4
Trustees appointed	28	24	67	4
Partitions	3	11	13	1
Real estate sales	101	252	396	29
Separate support decrees	10	29	117	0
Contempts and modifications	23	60	41	0
Petitions dismissed	19	20	36	0
Desertion and living apart (allowed)	2	10	6	0
Custody—minors (allowed)	0	13	21	1
Divorce:				
Original entries	220	228	640	20
Decrees nisi	160	165	462	13
Other decrees and orders (including modifications and contempts, etc.)	46	99	348	3
Dismissed under Rule 48	48	39	88	5
Adoptions	47	76	146	8
Commitments of mentally ill and feeble minded	0	3	0	0

PROBATE FOR THE YEAR ENDING DECEMBER 31, 1961

Essex	Franklin	Hampden	Hampshire	Middlesex	Nantucket	Norfolk	Plymouth	Suffolk	Worcester	Totals
4,667	550	3,440	815	9,974	57	4,226	2,421	9,221	4,993	45,667
1,212	116	726	144	3,610	12	881	529	2,584	1,382	12,511
1,027	146	618	215	2,133	22	1,292	556	1,301	997	9,661
281	15	151	41	513	2	178	120	474	279	2,386
141	28	118	29	269	5	168	59	285	170	1,445
143	17	87	20	266	6	178	53	245	121	1,259
7	2	14	2	37	0	10	8	20	7	135
570	56	250	88	886	12	458	290	560	517	4,465
74	5	56	8	238	0	280	45	1,417	631	2,910
15	1	6	1	512	1	86	18	172	193	1,129
0	1	21	0	20	0	172	73	248	139	749
18	1	2	2	12	2	6	4	12	5	82
19	11	20	3	23	0	20	17	104	0	252
749	136	1,104	173	1,866	8	615	553	1,462	1,054	8,828
475	103	704	108	1,192	9	460	363	1,190	708	6,112
342	99	1,168	317	959	0	779	564	2,667	958	8,349
149	11	170	11	290	0	107	107	328	148	1,501
268	30	256	50	623	4	299	157	353	255	2,572
2	3	8	0	3	0	1	2	1,302	5	1,329

LAND COURT

Following is a summary of the work of the Land Court for the year ending June 30, 1962. It shows a slight increase in total cases entered and a marked increase of equity and miscellaneous dispositions.

LAND COURT STATISTICS FROM JULY 1, 1961 TO JUNE 30, 1962

CASES ENTERED

Land registration	738	
Land confirmation	17	
Land registration, subsequent	980	
Tax lien	1,035	
Equity	2,250	
Miscellaneous	239	
Total cases entered		5,259
Decree plans made	683	
Subdivision plans made	943	
Total plans made		1,626
Total appropriation		\$405,250.00
Fees sent to state treasurer		102,123.64
Income from Assurance Fund applicable to expenses		10,380.66
Total expenditures		403,746.46
Net cost to Commonwealth		291,242.16
Assurance Fund, June 30, 1962		426,936.39
Assessed value of land on petitions in registration and confirmation cases entered		\$9,613,480.97

CASES DISPOSED OF BY FINAL ORDER,
DECREE OR JUDGMENT BEFORE HEARING

Land registration	661	
Land confirmation	23	
Land registration, subsequent	980	
Tax lien	854	
Equity and miscellaneous	2,564	
Total cases disposed of		5,082

MUNICIPAL COURT OF THE CITY OF BOSTON

The following statistics show the criminal and civil business of this central court. The major criminal increase is in those parking violations which require a court appearance. The number of parking tags returned under the non-criminal parking law decreased, but the revenue of the parking tag office more than doubled because of the increase in penalties. The figures on civil case-load and number of trials show no great change over the previous year, but it is to be noted that in the cases tried were 768 transferred or remanded cases from the Superior Court as against 563 in the previous year. In the course of the year 1,911 cases were transferred or remanded to this court under the provisions of Section 102C of G. L., C. 231 as amended. In the four years ending June 30, 1959-1962, 7,783 cases were transferred or remanded under this section, and 2,316 of them were tried. Of those tried only 819 were retransferred to the Superior Court. At the end of the period only 1,819 of the 7,783 cases were still pending in the lower court.

CRIMINAL

Automobile violations	1,265	
Parking violations	32,230	
Domestic relations	311	
Drunkenness in court	7,025	
Drunkenness released by probation officer	5,733	
Other criminal cases	5,699	
Inquests entered	0	
Search warrants issued	531	
Total		52,794

DISPOSITIONS:

Pleas of guilty	29,475
Pleas of not guilty	3,437
Placed on file, dismissed, etc.	7,815
Not arrested, pending for trial or sentence	5,654
Defendants acquitted	957
Bound over to Grand Jury	778
Defendants placed on probation (not including surrenders)	4,688
Defendants fined	23,085
Imprisonments	2,936
Fines appealed	136
Imprisonments appealed	481

NON-CRIMINAL PARKING LAW:

Parking tags returned by violators	296,026
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FINANCES:

Received from parking tag office	\$648,357.62
Received from court fines, fees, forfeitures, etc.	116,245.00

Total received and turned over to Commonwealth and City of Boston	\$764,602.62
Received as bail by court	102,581.00

Total receipts of the court \$867,183.62

CIVIL

	<i>Contract</i>	<i>Tort</i>	<i>Contract or Tort</i>	<i>All Others</i>	<i>Total</i>
Actions entered	14,621	6,455	429	759	22,264
Actions removed to superior court	219	648	28	0	895
Net entries after removals	14,402	5,807	401	759	21,369
Actions defaulted	8,761	1,108	44	291	10,204
Trials*	901	1,915	57	244	3,117
Plaintiff's findings**	771	905	0	141	1,817
Defendant's findings**	97	411	9	109	626
<i>Appellate Division</i>					
Reports allowed	6	6	0	0	12
Reports disallowed	11	6	1	1	19
Cases heard	4	5	0	0	9
Cases affirmed**	3	7	0	0	10
Cases reversed**	0	5	0	1	6
Cases consolidated under G. L., C. 223, § 2	9	58	2	0	69
Appeals to supreme judicial court perfected	2	1	0	0	3
Appeals to supreme judicial court affirmed	1	3	0	0	4
Appeals to supreme judicial court reversed	2	0	0	0	2
Plaintiff's judgments total, viz.:					
By default	9,202	271	0	194	9,667
After trial	771	905	0	141	1,817
By agreement	849	2,540	0	16	3,405
Defendant's judgments total, viz.:					
By non-suit	9	136	2	0	147
After trial	97	411	9	109	626
By agreement	7	4	0	0	11
Neither party agreement	204	177	2	1	384
Amount of plaintiffs' judgments	\$3,621,468.04	\$943,217.97	0	\$795.00	\$4,565,481.01
Average of plaintiffs' judgments	\$334.64	\$253.83	0	\$2.26	\$306.63

*768 remanded cases included in total tried.

**Some cases are heard before the reporting period and decided during it and some are heard during the reporting period and decided during it.

DISTRICT COURTS

As in other courts there has been a substantial increase in the number of civil entries in the District Courts. For the year ended June 30, 1962 the increase over the preceding year was 2,767. More noticeable, however, was the increase in automobile cases on the criminal side of the court, over 13 per cent, from 156,749 to 177,889, possibly a result of the spirit behind the so-called no-fix law.

STATISTICS OF THE DISTRICT COURTS OF MASSACHUSETTS FOR THE YEAR ENDING JUNE 30, 1962 AS REPORTED BY THE CLERKS OF SAID COURTS

Compiled by the Administrative Committee of District Courts (G.L. Ch. 218 S43A.)

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	
DISTRICT COURTS arranged in accordance with 1960 CENSUS	Total Civil Writs Entered	Trials less Summary Process (Effectments)	Summary Process Entered (Included in Column 1)	Summary Process Tried	All Removals	Reported to Appellate Divisions	Reported to Supreme Judicial Court	Supplementary Process	Small Claims	Criminal Cases Begun	Criminal Appeals	Drunkenness	Automobile Cases	Operating Under Influence of Intoxicating Liquor	Gaming and/or Lottery Cases	Juvenile Cases	Neglected Children	Parking Tickets Returned	Insane Commitments	Uniform Reciprocal Enforcement of Support Act, G.L., Chap. 273A.			Remand or Transfer Cases Acts 1958, Chapter 369					
																				No. Cases Initiated	No. Cases Received from Other States	Amount of Money Collected	No. Cases Received	Tried	Retransferred to Superior Court after Trial	All Dispositions: Agreements, Trials, Defaults, Non-Suits, Dismissals, Settled, etc.	Pending	
*1. Central Worcester	4,818	474	372	77	100	28	0	1,902	4,114	24,488	102	3,335	10,308	230	55	658	54	48,697	856	84	33	74,886.09	1,345	188	129	803	820	*+1.
+2. Springfield	4,953	643	311	70	480	13	0	2,615	6,112	22,983	162	3,277	12,854	120	39	435	25	65,542	293	58	72	86,300.96	172	25	14	89	127	+2.
+3. East Norfolk, Quincy	4,316	450	189	51	194	7	0	1,311	2,658	7,619	139	1,804	3,470	263	9	302	24	19,926	33	40	7	61,590.53	488	70	38	416	171	+3.
+4. 1st East. Middlesex, Malden	4,817	364	241	174	332	5	1	1,419	2,542	8,340	119	1,142	6,105	173	18	283	7	57,480	33	32	18	67,862.97	496	95	39	267	229	+4.
+5. 3rd East. Middlesex, Cambridge	4,625	326	344	109	216	10	1	1,096	1,798	19,674	192	2,348	15,867	193	53	269	67	113,502	89	43	19	73,092.63	344	57	29	196	113	+5.
+6. Lowell	3,201	229	254	46	138	0	0	869	4,041	7,405	51	1,386	4,234	167	99	292	31	26,473	22	38	20	75,428.67	240	30	8	86	180	+6.
+7. Dorchester	2,029	415	951	310	317	0	0	1,561	2,360	11,371	263	1,541	5,348	149	142	377	15	50,124	11	51	22	58,013.66	400	52	25	195	276	+7.
+8. Southern Essex, Lynn	3,231	188	327	73	157	0	1	1,509	2,604	7,468	36	2,576	3,403	178	74	217	9	51,081	11	49	18	58,402.02	379	38	12	139	279	+8.
+9. 3rd Bristol, New Bedford	2,508	284	241	46	236	3	2	414	3,088	4,763	107	1,496	956	184	301	358	0	10,138	67	36	16	49,042.96	303	39	13	155	148	+9.
+10. 2nd Bristol, Fall River	1,641	260	183	53	59	1	1	233	1,338	3,073	156	1,230	1,453	157	82	221	0	28,000	67	60	2	27,601.17	145	41	22	109	47	+10.
+11. Roxbury	3,225	78	2,266	340	187	1	0	1,713	1,861	31,759	291	5,798	21,288	88	247	730	120	138,683	24	148	63	177,582.34	209	30	15	135	89	+11.
+12. Lawrence	1,677	132	161	37	126	0	0	192	1,384	3,745	42	1,394	1,564	127	57	187	10	25,426	8	32	7	32,795.38	181	25	13	123	90	+12.
+13. West Roxbury	687	52	306	130	39	3	0	855	1,038	7,935	157	963	6,375	63	15	397	5	25,796	4	27	8	41,109.54	150	22	12	72	98	+13.
+14. 4th East. Middlesex, Woburn	2,054	338	70	40	116	0	0	787	1,198	2,800	49	727	1,435	82	1	38	0	3,216	12	14	15	21,006.30	166	20	8	70	292	+14.
+15. Northern Norfolk, Dedham	1,707	165	54	18	75	6	0	629	1,001	1,799	101	437	991	126	4	95	5	10,110	327	11	7	25,913.16	227	38	15	199	102	+15.
+16. First Essex, Salem	2,351	185	63	40	157	2	0	365	996	2,966	80	984	1,039	120	9	145	13	11,034	316	24	8	26,262.95	186	20	4	86	171	+16.
+17. 2nd East. Middlesex, Waltham	2,088	161	99	32	93	2	1	616	1,289	7,423	163	970	5,500	130	13	156	2	35,983	608	23	16	20,316.20	155	20	14	65	109	+17.
+18. Hampshire, Northampton	526	21	31	9	39	2	0	102	1,093	3,593	63	464	2,275	84	8	155	7	5,400	225	16	11	14,469.00	9	19	5	59	11	+18.
+19. Brockton	1,734	175	164	64	137	2	0	473	1,472	5,272	111	1,278	2,548	201	3	182	24	15,857	63	42	7	37,687.35	150	54	35	185	46	+19.
+20. Somerville	2,539	239	258	200	145	1	0	883	1,183	5,698	84	1,392	3,335	94	55	187	7	24,861	6	15	6	19,792.56	272	45	10	136	192	+20.
+21. Newton	1,903	183	49	11	124	0	0	512	1,271	4,451	71	439	3,328	46	0	127	7	19,081	20	7	6	66,696.41	304	34	22	122	278	+21.
+22. 1st So. Middlesex, Framingham	1,621	191	72	40	145	0	0	371	1,046	2,853	81	552	1,539	108	29	164	5	355	51	15	11	21,896.40	125	63	15	111	23	+22.
+23. 2nd Plymouth, Hingham	1,670	128	76	33	80	2	0	621	1,332	2,480	337	558	2,480	179	0	175	1	378	32	15	7	29,757.68	93	23	15	73	29	+23.
+24. Central Berkshire, Pittsfield	835	18	64	2	23	2	0	656	1,209	3,434	30	534	2,888	62	8	59	0	21,019	0	16	6	20,140.58	59	14	9	54	9	+24.
+25. Central Middlesex, Concord	694	56	18	7	33	1	0	225	536	3,022	56	247	2,331	98	0	112	4	2,078	42	3	4	4,816.40	94	21	12	49	52	+25.
+26. 1st Bristol, Taunton	840	85	63	17	47	0	2	275	859	2,659	80	326	1,737	130	20	128	2	450	183	23	5	25,600.75	74	17	2	62	16	+26.
+27. Chelsea	1,398	222	265	55	124	0	0	721	988	4,845	204	1,579	1,081	127	5	239	42	6,093	43	18	8	16,723.15	215	98	20	212	114	+27.
+28. Western Norfolk, Wrentham	924	76	56	18	35	1	0	410	1,074	1,740	52	271	921	93	0	128	2	73	349	2	11	9,222.00	65	25	7	58	19	+28.
+29. East Boston	798	61	266	91	101	0	0	487	720	8,548	61	633	6,999	33	49	124	19	50,988	23	16	7	20,467.36	129	23	9	94	63	+29.
+30. Brighton	701	113	310	176	59	1	0	546	915	7,323	58	733	5,685	33	20	51	2	49,788	0	11	11	26,111.90	95	19	6	56	45	+30.
+31. Chicopee	297	18	43																									

BOSTON JUVENILE COURT

Since we lamented an increase last year we can rejoice, with the reservations required as to all fluctuations in statistics, that there is a marked decrease in Delinquent Complaints, particularly as to girls.

BOSTON JUVENILE COURT

July 1, 1961 — June 30, 1962

COMPLAINTS:

	<i>Boys</i>	<i>Girls</i>	<i>Totals</i>
Juvenile Criminal	2	0	2
Delinquent	698	153	851
Wayward	1	1	2
Totals	701	154	855
	<i>Men</i>	<i>Women</i>	<i>Totals</i>
Adults	10	15	25
	<i>No. of Complaints</i>	<i>No. of Children Represented</i>	
Children in need of care and protection	6	17	
TOTAL NUMBER OF ALL COMPLAINTS:			
Juvenile		855	
Adult		25	
Children in need of care and protection		6	
Total		886	

Active as of June 30, 1962:

JUVENILES:

	<i>Individuals</i>	<i>Complaints</i>
Boys	207	234
Girls	61	62
Totals	268	296
ADULTS:		
Men	25	26
Women	25	27
Totals	50	53
CHILDREN IN NEED OF CARE AND PROTECTION	48	25
TOTALS (Active as of June 30, 1962)	366	374
NUMBER OF CASES:		
Juveniles		296
Adults		53
Complaints of children in need of care and protection		25
Total		374